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# **Seattle Police Department Office of Professional Accountability**

## **Training and Operations Manual**

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## Preface

The Seattle Police Department (SPD or the Department) seeks to foster an organizational culture where fundamental values include integrity, accountability, ethical decision-making, and respect for civil and constitutional rights.<sup>1</sup> In order to ensure that the Department encourages a culture that refuses to tolerate even low-level, isolated instances of misconduct, the Office of Professional Accountability (OPA) is committed to conducting thorough, fair and expeditious investigations of all complaints filed against SPD employees.

The *Office of Professional Accountability Training and Operations Manual* (OPA Manual) is primarily intended to be used as a reference for employees assigned to the OPA Investigations Section (OPA-IS), functioning as a guide in carrying out OPA-IS duties. The manual is not exhaustive of all substantive and procedural issues that can arise with OPA complaints, but is intended to be a practical handbook for unit personnel. The manual also can serve as a resource to other Department personnel addressing complaints assigned to them for resolution and as a reference for anyone interested in the complaint investigation and discipline process. A robust and transparent system of administrative complaint investigations is essential to maintaining public trust and confidence in the Department.

SPD has a responsibility to the public and its employees to investigate and discipline those whose conduct adversely affects the operation of the Department and its relationship to the community. The rights of all parties are to be recognized and preserved. An open, fair, rigorous search for the truth is the objective for every investigation and hearing arising from the administrative complaint process.

The Department advocates the use of positive discipline to gain employees' compliance with policies, procedures, and conduct expectations. Positive discipline or corrective action may consist of constructive dialog between the employee and the employee's supervisors or training tailored to address the problematic behavior. Employees who fail to successfully respond to positive discipline may become subject to punitive discipline such as verbal or written reprimands, suspension, demotion, or termination from employment. Some kinds of serious misconduct will result in punitive discipline from the outset.

To be assigned to OPA, personnel must meet and maintain a deep commitment to the increased responsibility they have to enhancing public trust. Their effort must reflect dedication to upholding constitutional policing and conduct expectations set out in the SPD Manual, and respect for the dignity of every person with whom they have contact or who is affected by their work. OPA personnel must work with courage and integrity in the face of internal or external criticism, constantly striving to be effective, efficient, and ethical, providing excellent public service.

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<sup>1</sup> Seattle Police Manual, 1.040 - Department Mission Statement and Priorities.

*Failure to comply, fully or in part, with any provision of the OPA Manual is not to be construed to have a presumptive adverse affect on an OPA investigation and is not to be used as a means of challenging the findings or disposition of any complaint.*

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## **TABLE OF CONTENTS**

- I. Civilian Oversight of the Seattle Police Department: Three-Prong System**
  - A. The Office of Professional Accountability**
  - B. OPA Auditor**
  - C. OPA Review Board (OPARB)**
- II. OPA Investigations Section**
  - A. OPA-IS Captain**
  - B. OPA-IS Lieutenant**
  - C. OPA-IS Sergeant-Investigators**
  - D. OPA-IS Administrative Personnel**
- III. Training Requirements**
  - A. Newly Assigned Personnel**
  - B. On-going Training for OPA-IS Personnel**
- IV. OPA-IS Office Administrative Operations**
  - A. Location and Contact Information**
  - B. OPA-IS Office Hours**
  - C. Emergency After-Hours Contact**
  - D. Phone Numbers, Addresses and Radio Call Signs of OPA-IS Personnel**
  - E. Office Supplies**
  - F. Files, Records and Retention Procedures**
  - G. Confidential Information**
  - H. Office Security**
  - I. Security of Files**
  - J. Release of Information**
  - K. Records Purging Procedure**

- L. Mobilization for Unusual Circumstances**
- M. Call Outs**
- N. Minimum Staffing Requirements**
- O. Holidays**
- P. Overtime**
- Q. Business Cards**
- R. Telephone and Computer Usage**
- S. Public Contact**
- V. Complaint Intake Process**
  - A. Preliminary Investigation of Complaints**
  - B. Source of Complaints**
  - C. Assignment of Intake Duties**
  - D. Gathering of Information During Intake**
  - E. Steps of the Intake Process**
  - F. Recording Complainant's Interview at Intake**
  - G. Interpreters and Translators**
  - H. Complaint Information Packet**
  - I. Use of Force Documentation**
  - J. OPA Mediation Program Option**
  - K. Conflict of Interest**
  - L. Non-Retaliation**
  - M. Contact with Prosecuting Authorities**
  - N. Complaint Notification and Investigation Timelines**
    - 1. 5-Day Notice of Complaint**
    - 2. 30-Day Classification Notice**

- 3. 180-Day Investigation Deadline**
- 4. 3-Year Statute of Limitations**
- 5. 3-Years Plus the Current Year Retention Period**

- VI. Complaints of Criminal Misconduct**
- VII. Complaints naming the Chief of Police, OPA or OPA-IS Personnel**
- VIII. Complaints involving EEO matters**
- IX. Complaint Tracking in AIM**
- X. Complaint Classification Process (including Mediation Referrals)**
- XI. Complaints Classified for Supervisor Action**
- XII. Complaints Classified for OPA Investigation**
- XIII. OPA Investigation Findings**
- XIV. Discipline Review Process**
- XV. Training Referrals**
- XVI. Complaint Closure Process**
- XVII. Policy and Training Recommendations Resulting from OPA Complaints**

## **I. Civilian Oversight of the Seattle Police Department: Three-Prong System**

In 1992, the City of Seattle appointed Judge Terrance A. Carroll (ret.) to be its first Internal Investigations Auditor of the Police Department's internal affairs function. In 1999, a Citizens Review Panel, chaired by Charles V. Johnson, was appointed by then Mayor Paul Schell to evaluate employee accountability and the process by which police misconduct complaints were investigated by the Seattle Police Department (SPD). The panel concluded that SPD had worked to develop and maintain standards of professional integrity and that there was no evidence of widespread misconduct, but that there was room for improvement.<sup>2</sup> The panel found that responsibility for investigating misconduct allegations and imposing discipline, when appropriate, should rest with the Department and Chief of Police, noting "such responsibility is the key to accountability." The central recommendation made for improving the system was a change in the structure of oversight of internal investigations, and the creation of the Office of Professional Accountability (OPA).

The 1999 Citizens Review Panel stated that it considered and decided against a variety of other models from other jurisdictions, when it recommended the formation of OPA. It also recognized that a number of other substantive changes had to be made in the four areas of oversight, leadership, policies and procedures and training in order for OPA to succeed. Follow up reports indicate that the great majority of recommendations made by the panel were implemented. However, the then Mayor and City Council did not accept nor incorporate into the enabling legislation all of the recommendations. For example, the panel recommended that OPA subsume the duties of the Internal Investigations Auditor, but the OPA Auditor remains active in the hybrid system adopted by Seattle. Similarly, the OPA Review Board was established in May 2002, though not contemplated by the 1999 panel. Thus, Seattle created a three-prong approach to police oversight comprised of the OPA, the OPA Auditor, and the OPA Review Board.

In 2007, then Mayor Greg Nickels appointed the Police Accountability Review Panel (PARP), chaired by Judge Carroll (ret.), to conduct a comprehensive review Seattle's police accountability system. PARP issued its report in 2008, finding that the three-prong structure should continue, but recommending 29 specific ways to strengthen accountability, public confidence, independence, professional conduct and transparency.<sup>3</sup> The recommendations were accepted by the Mayor and Chief of Police and implementation efforts were addressed in the OPA Auditor's December 2008 report and the OPA Director's April 2009 report.

Following an investigation of the Seattle Police Department by the Department of Justice, Seattle and DOJ entered a Settlement Agreement in which "DOJ found that the OPA system is sound and that investigations of police misconduct complaints are generally thorough, well-organized, well-documented, and thoughtful."<sup>4</sup> The parties agreed that, "SPD should continue to strive to ensure that all complaints regarding officer conduct are fully and fairly dealt with; that all investigative findings are supported by the evidence and documented in writing; and that officers and complainants receive a thorough, fair, and expeditious resolution of complaints."<sup>5</sup> These

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<sup>2</sup> Citizens Review Panel Final Report, August 19, 1999.

<sup>3</sup> Police Accountability Review Panel Final Report, January 29, 2008.

<sup>4</sup> Settlement Agreement and Stipulated [Proposed] Order of Resolution, July 27, 2012, p. 46.

<sup>5</sup> Ibid.

goals are to be advanced through a review and revision, as necessary, of SPD policies on reporting misconduct and retaliation, an update of the OPA Manual, and the identification of OPA liaison officers at each precinct, along with working with the Community Police Commission on review of the OPA structure, investigation timelines, and public education.<sup>6</sup>

### **A. The Office of Professional Accountability**

The Office of Professional Accountability (OPA) was created to receive and investigate complaints of misconduct against Seattle Police Department employees. Previously, the Police Department's Internal Investigations Section performed the function. Under the hybrid model adopted by Seattle, a civilian Director reports directly to the Chief of Police and is a member of the Department's command staff. The civilian OPA Director manages the work of sworn employees in the OPA Investigations Section (OPA-IS).

The responsibilities of the OPA Director include: (1) regularly advising the Chief of Police, the Mayor, and the City Council on all matters involving the Police Department's investigatory and disciplinary functions; (2) recommending policy to the Chief of Police, the Mayor, and the City Council on issues concerning the professional standards of the Police Department; (3) evaluating the internal investigations process; and (4) recommending strategies and policies to improve complaint gathering and investigative procedures. The Director is selected based on criteria outlined in the Seattle Municipal Code, is appointed by the Mayor and confirmed by City Council, and may serve up to three, 3-year terms.<sup>7</sup>

The OPA Director manages the overall investigative, training, and administrative functions of OPA and assists with other aspects of the Department's discipline process. The OPA Director directs the investigative process, classifies all complaints, certifies the findings and completion of all OPA cases, makes recommendations regarding the disposition of complaints to the Chief of Police, and provides analysis to the Chief of Police regarding disciplinary action in order to promote consistency of discipline. Further, the OPA Director provides recommendations regarding Department policies and practices related to police accountability and professional conduct, and publishes monthly and annual reports regarding the work of OPA and policy matters.

The Office of Professional Accountability – Investigations Section (OPA-IS) is a subunit of the Office of Professional Accountability (OPA). Personnel assigned to OPA-IS include a Captain, Lieutenant, and Sergeant-Detectives who are responsible for the day-to-day activity involved with conducting thorough, fair, and expeditious administrative investigations of misconduct complaints. Three civilian administrative staff assistants support the work of OPA, with one reporting directly to the OPA Director and the other two assigned to OPA-IS.

OPA can conduct administrative investigations into any type of misconduct brought to its attention, though it cannot conduct criminal investigations.<sup>8</sup> Officer involved traffic collisions and officer-involved shootings also are initially reviewed elsewhere in the Department. Equal

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<sup>6</sup> Memorandum of Understanding between the United States and the City of Seattle, July 27, 2012, p.4-6.

<sup>7</sup> See Seattle Municipal Code Chapters 3.28.800 through 3.28.830.

<sup>8</sup> See OPA Manual Section \_\_\_\_\_ for a discussion concerning complaints of criminal misconduct.



employment opportunity (EEO) complaints of discrimination or harassment by one employee against another employee are investigated outside of OPA, though the EEO Investigator has reported to the OPA Director at various times.

OPA-IS investigates but does not adjudicate complaints. OPA-IS provides fact-finding and proposes a finding for each allegation of misconduct that it investigates. Though the OPA Director makes dispositions in complaints that are not Sustained, the Chief of Police is the final decision maker in all discipline matters.<sup>9</sup>

## **B. OPA Auditor**

The civilian OPA Auditor is appointed by the Mayor and confirmed by the City Council, with selection criteria outlined in the Seattle Municipal Code.<sup>10</sup> The OPA Auditor may serve up to three, 3-year terms. The Auditor provides review and assessment of OPA complaints and of Police Department policies and practices related to police accountability and professional conduct.

The OPA Auditor regularly reviews complaint classification recommendations made by OPA-IS personnel, completed OPA-IS investigations, and documentation for complaints that have been referred to supervisors for handling (Supervisor Actions). The Auditor meets at least once a week with the OPA Director to conduct this review and discuss any feedback she might have. The OPA Auditor may recommend a change in complaint classification or recommend and require further investigation in a case. “Criteria the OPA Auditor should consider include but are not limited to: (1) whether witnesses were contacted and evidence collected; (2) whether interviews were thorough; and (3) whether applicable OPA procedures were followed.”<sup>11</sup>

The OPA Auditor has access to and may audit any and all OPA records for the purpose of ensuring thoroughness, fairness and timeliness of OPA investigations or as related to other police accountability and professional conduct recommendations. The OPA Auditor publishes semiannual reports on her auditing activities.

## **C. OPA Review Board (OPARB)**

The first OPA Review Board (OPARB) convened in 2002 and consisted of three members appointed by City Council. Following legislation in response to the 2008 report from the Police Accountability Review Panel (PARP), OPARB was expanded to include seven members, one of whom is chosen annually by OPARB to be its Chairperson.<sup>12</sup> The City Council selects candidates based upon criteria contained in the Seattle Municipal Code, with at least one member being an attorney, one having significant experience in community outreach, another with at least 5 years of law enforcement experience, and another member having at least 5 years of experience in law enforcement or criminal justice. Members may serve up to four 2-year terms.

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<sup>9</sup> Seattle Municipal Code 3.28.810.F.

<sup>10</sup> See Seattle Municipal Code Chapters 3.28.850 through 3.28.870.

<sup>11</sup> Ibid.

<sup>12</sup> See Seattle Municipal Code Chapters 3.28.900 through 3.28.920.

The purpose of OPARB is to review the quality of the OPA's complaint handling process; to advise the City on Police Department policies and practices related to police accountability and professional conduct; and to conduct public outreach on behalf of itself, the OPA, and the OPA Auditor in order to enhance the quality and credibility of the City's police accountability system and thereby maintain public confidence in the professionalism and effectiveness of the Police Department. OPARB does not participate in the investigation or disposition of OPA complaints and cannot seek to influence the disposition or discipline related to specific complaints.

OPARB publishes periodic reports on Police Department policies and practices related to police accountability and professional conduct.

## **II. OPA Investigations Section**

The selection of investigators and supervisors for assignment to the OPA Investigations Section involves critically important decisions, for Department employees and the public. "The abilities of investigators to be fair, thorough, and accurate in their investigations will be paramount to the ability of the chief to accomplish organizational goals and to maintain internal and external confidence in the organization."<sup>13</sup> OPA staff are tasked with investigating and assessing the performance and credibility of individuals whom they have known and might have worked with in other capacities at SPD. They must listen closely to and treat with respect all persons who believe the police have mistreated them. Those involved with investigating OPA complaints must be able to set aside their personal biases and search for the truth about the police incident underlying a complaint.

The OPA Director has final decision-making authority as to whether a particular employee will be assigned to OPA. The Director looks for individuals who are honest, have high integrity, are well regarded by others, and able to conduct thorough, fair, and expeditious investigations. Further, OPA staff candidates:

- Must have extensive law enforcement knowledge;
- Be very familiar with the operation of the Seattle Police Department;
- Have strong verbal communication skills;
- Have strong investigative skills or a demonstrated aptitude for developing such skills;
- Be knowledgeable about accessing Departmental data bases and other sources of information;
- Appreciate the importance of accurate electronic tracking of OPA complaints;
- Be analytical and demonstrate an ability to write thorough and concise reports about events that can be quite complex;
- Be open to feedback and committed to seeking out other learning opportunities.

Proven experience as an Acting OPA Intake Sergeant and a desire to continue developing investigative skills is very helpful. OPA personnel must understand and be able to articulate how vital it is to have a strong system able to identify, investigate, and discipline officers who do not

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<sup>13</sup> Noble, Jeffrey J. and Alpert, Geoffrey, Managing Accountability Systems for Police Conduct, Waveland Press, Inc. (2009).

live up to the high standards of professionalism set by the Department. Finally, the Director will review the complaint history for anyone considering a reassignment to OPA; while having a complaint history will not automatically preclude anyone from working in OPA, recent, numerous or particularly serious Sustained complaints might be cause for disqualification.

#### **A. OPA-IS Captain**

A Captain who is responsible for the day-to-day management of the section commands OPA-IS. The OPA-IS Captain reports directly to the OPA Director and assists her in ensuring the efficient and effective functioning of OPA.

Responsibilities of the OPA-IS Captain include:

- Review all OPA-IS investigations for completeness, specifics of allegations, and content prior to case being forwarded to the named employee's chain of command and OPA Director.
- Upon return of cases from the chain of command, consider recommended changes (if any) and resolve differences as necessary after consulting with the OPA Director.
- Liaison with federal, state, county and local law enforcement agencies and prosecutors.
- Consult with command staff, OPA Director, Chief of Police, and Legal Advisor regarding OPA-IS investigations.
- Assist OPA Auditor as needed.
- Present OPA-IS case investigation at disciplinary meetings.
- Support efforts of City Law Department when preparing for a Disciplinary Review Board, arbitration or litigation involving OPA-IS investigations by facilitating the transfer of a case file copy, providing OPA procedural explanation, and testifying in deposition or otherwise.
- Consult with the OPA-IS Lieutenant, OPA Director and OPA Auditor regarding more complex decisions on complaint classification.
- Summarize findings and recommend disposition for each allegation against each named employee in OPA-IS investigations through the Proposed Disposition Memorandum.
- Ensure investigations are conducted in manner that is thorough, fair and expeditious.
- Notify the OPA Director of identified misconduct patterns, training needs, and policy/procedure recommendations.
- Ensure that all employee notices are properly forwarded as required by various collective bargaining contracts.
- Provide day-to-day management of OPA-IS personnel.
- Participate with the OPA Director in identifying and selecting personnel for assignment to OPA-IS.
- Ensure that all notices and investigations meet timeline requirements.
- Periodically review completed Supervisor Action cases to ensure matters referred to supervisors are handled appropriately.
- Periodically review Contact Log entries to ensure appropriate handling of these communications with OPA-IS.

- Regularly evaluate the performance of the OPA-IS Lieutenant and OPA-IS administrative staff.
- Serves as Acting OPA Director as needed
- Perform other assignments as requested by the OPA Director.

#### **B. OPA-IS Lieutenant**

The OPA-IS Lieutenant reports to and supports the OPA-IS Captain in management of the section. Responsibilities of the OPA-IS Lieutenant include:

- Assume command of the section during the OPA-IS Captain's absence, assisting in the performance of duties outlined above for the Captain.
- Supervise OPA-IS Sergeant-Investigators and administrative staff.
- Consult with Sergeant-Investigators regarding incoming complaints, classifications, allegations, investigative plans and other issues that arise during the investigative process.
- Assist, guide, and advise investigators regarding best practices and procedures to use in conducting investigations.
- Review investigations for completion prior to review by the OPA Auditor.
- Participate in the actual investigation of certain cases in conjunction with the assigned Sergeant-Investigator; e.g., cases involving members of SPMA as named or witness employees.
- Participate in liaison work with other Department units and outside agencies.
- Serves as acting OPA Captain, as needed
- Regularly evaluate the performance of OPA-IS Sergeant-Investigators.

#### **C. OPA-IS Sergeant-Investigators**

OPA-IS Sergeant-Investigators are responsible for conducting investigations of complaints of misconduct made to OPA. While OPA strives to have an Acting Sergeant-Investigator available to handle the complaint intake function, all regular Sergeant-Investigators must be prepared to assume intake responsibilities, along with other aspects of complaint investigation.

Responsibilities of OPA-IS Sergeant-Investigators include:

- Conducting intake of misconduct complaints.
- Preparing investigative plans for complaints assigned for an OPA-IS investigation.
- Conducting investigations of complaints assigned for an OPA-IS investigation.
- Providing case update reports to the OPA-IS Lieutenant on a weekly basis.
- Initiating and updating complaint related information in the Administrative Investigations Management tracking system.
- Participating in post-BLEA teaching of newly sworn police officers and training other Department personnel about the OPA investigation process
- Serves as acting OPA Lieutenant, as needed

#### **D. OPA-IS Administrative Personnel**

Senior Administrative Staff duties include:

- Administer and coordinate maintenance of the Administrative Investigations Management (AIM) complaint tracking system.
- Prepare and distribute employee, bargaining unit, and chain of command notifications.
- Prepare new case file folders for cases classified for OPA-IS investigation or Supervisor Action.
- Track, copy, and file all OPA-IS investigations, Supervisor Actions, and Contact Logs.
- Review, analyze, and provide statistical data for periodic reports.
- Transcribe interview tapes and review/proof-read completed transcripts.
- Liaison with the SPD Public Disclosure Unit.
- Answer questions and screen in-coming telephone calls and in-person inquiries.
- Perform section facility coordinator responsibilities; i.e., order supplies and equipment, and facilitate, as needed, repair of telephones, computers, copiers, and other office equipment.
- Review and distribute incoming mail and other documents.
- Provide primary administrative support to the OPA-IS Captain and Lieutenant.
- Perform duties OPA-IS archivist and file manager.
- Manage file retention process.
- Train clerical support staff.

Other Administrative Staff duties include:

- Answer questions and screen in-coming telephone calls and in-person inquiries.
- Transcribe interview tapes.
- Maintain section telephone listings and staff status board.
- Distribute weekly intake packet and other documents to OPA Director and OPA Auditor.
- Distribute and collect mail to and from the Data/Distribution center and OPA Director's office daily.
- Assist with the new case file folder preparation.
- Assist with case copying.
- Assist senior administrative specialist as needed.

### **III. Training Requirements**

All OPA personnel must participate in Department In-Service training that is identified as mandatory and are encouraged to further their education by attending other training or learning opportunities offered internally or through sources outside the Department. Per SPD policy, OPA sworn personnel “will be familiar with the SPD Manual, Directives, and Notices” and related Department publications.<sup>14</sup> OPA personnel shall also be familiar with the all procedures set out in the OPA Manual, along with references contained in the Appendix.

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<sup>14</sup> Seattle Police Manual, 16.100.III.

### **A. Newly Assigned Personnel**

The OPA Director and/or OPA-IS Captain should review the training history for any sworn officer newly assigned to the Section, to assess individualized training needs. An individualized training plan should be developed, based on the education, skills and experience the employee brings to OPA, but at a minimum should include:

1. An experienced Sergeant-Investigator serving as a mentor: the mentor should be assigned by the OPA-IS Captain and/or Lieutenant to work with the newly assigned employee, to assist in developing the new Investigator's skills.<sup>15</sup> The newly assigned Sergeant-Investigator should shadow the mentor (and other OPA Investigators) performing OPA investigations, and should primarily perform Intake functions for at least the first two months of the new assignment. Focusing initially on Intake will help the new Sergeant-Investigator transition from skills necessary for criminal investigations to competencies involved in administrative investigations, expose the employee to the variety of types of misconduct complaints lodged with OPA, and help the employee understand the complaint classification and processing systems. Training for Acting Sergeants assuming the Intake Sergeant role for a limited period of time, should be more tailored to this function.
2. A review of the OPA Manual: a hard copy of the manual and/or access to an electronic copy will be provided. A schedule will be set up for the newly assigned employee to review and discuss specific sections of the manual with the assigned mentor or other experienced OPA personnel. The goal will be to provide a new staff member with an orientation to OPA operational procedures, an overview of the complaint intake and investigation process, an initial understanding of investigative and other resources available in OPA, and the philosophy underlying civilian oversight and OPA.
3. Training for the newly assigned Sergeant-Investigator should stress throughout that every complainant deserves respect, and the importance of timeliness and being responsive to complainants and named employees. Once a month, the OPA-IS Captain should provide an update to all staff on changes to Department policy, training directives issued, amendments to the OPA Manual, and the like. Training should also address the following topics, along with :
  - a) Relevant law, policy and collective bargaining agreements
    1. Caselaw – for example:
      - *Graham v. Connor*
      - *Tennessee v. Garner*

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<sup>15</sup> The time involved in serving as a mentor will be factored into caseload distribution for a period up to three months after a Sergeant-Investigator takes on mentoring responsibilities.

- *Terry v. Ohio*
  - *Miranda v. Arizona*
  - *Loudermill v. Cleveland Board of Education*
  - *Garrity v. New Jersey*
  - *NLRB v. Weingarten*
2. Seattle Police Manual
  3. CBAs, in particular the SPOG agreement, Article 3 – Disciplinary, Complaint Hearing, and Internal Investigation Procedures
  4. State law materials available through the Washington State Criminal Justice Training Commission website including Law Enforcement Digests and legal update outlines on arrest, search, seizure and other topics:  
[https://fortress.wa.gov/cjtc/www/index.php?option=com\\_content&view=article&id=137&Itemid=80](https://fortress.wa.gov/cjtc/www/index.php?option=com_content&view=article&id=137&Itemid=80)
- b) Intake, complaint classification, findings, and discipline overview
  - c) AIM complaint tracking
    - Newly assigned employees should spend time with OPA Administrative Staff to learn about their role in the system and how AIM is used
    - Underscore the importance of AIM complaint tracking, as discussed in Section \_\_\_\_
  - d) Digital In-car Video and Holding Cell Video
  - e) Best practices in administrative investigations
    1. Investigation Plans
    2. Conducting objective and thorough investigations
    3. Investigation and notice timelines
    4. Collection and preservation of evidence
    5. Communication with named employees and complainants
    6. Interviewing skills
    7. Intake and Follow-up form entries
    8. Writing clear, concise, well organized and thorough case summaries
    9. Criminal investigation monitoring process

- f) Use of Force – policy, reporting and review
- g) Departmental EEO and Early Intervention System (EIS) procedures and relation to OPA complaints
- h) Interface with other law enforcement agencies
- i) Civilian oversight in Seattle and elsewhere (the OPA Director will provide this orientation)
- j) OPA Mediation Program (the OPA Director or her designee will provide this orientation)

When a new OPA-IS Captain or Lieutenant is assigned to the Section, the OPA Director and/or former Captain or Lieutenant will develop an individualized training plan that includes, in addition to the topics noted above, a review of:

- a) The OPA Director's goals and objectives
- b) OPA resource management
- c) Case management protocols, including the use of AIM for tracking the status of investigations and for devising strategies for expediting investigations while maintaining quality
- d) Labor/management issues impacting OPA
- e) The Captain or Lieutenant's involvement with Departmental activities outside OPA such as the Race and Social Justice Initiative or Sergeant's Academy

## **B. On-going Training for OPA-IS Personnel**

The OPA Director will work with the OPA-IS Captain and Lieutenant to assess training needs of individual Sergeant-Investigators and Administrative Support Personnel develop a training plan from both the individual and Section perspective. Input from staff should be sought as to training topics or programs of interest, both individually and for the entire staff. At a minimum, the following topics should be covered in training for all Sergeant-Investigators individually or as a group at least once/year:



1. Interview skills
2. Investigation plans and evidence analysis
3. Caselaw updates on use of force, search and seizure, stops and arrests, biased policing, and other issues frequently raised in OPA complaints
3. Mediation and alternative dispute resolution
4. Select topics such as Crisis Intervention, Race and Social Justice, and de-escalation strategies

Though budget restrictions will limit the ability to attend training that is fee based, or to bring in trainers to OPA who charge for services, the following are examples of resources for training relevant to the work of OPA. Some offer free and/or e-learning options and listserves with regular informational updates. Details can be found by visiting the associated website:

1. National Association for Civilian Oversight of Law Enforcement (NACOLE) annual conferences
2. International Association for Chiefs of Police (IACP)
3. Police Executive Research Forum (PERF)
4. National Institute of Justice (NIJ)
5. Force Science Analysis
6. Criminal Justice Training Center (CJTC) sponsored courses
7. Regional Internal Affairs Round-table
8. Regional Law Enforcement Legal Advisors Group
9. SPD Street Skills
10. SPD Detective In-Service Trainings

#### **IV. OPA-IS Office Administrative Operations**

##### **A. Location and Contact Information for the Office of Professional Accountability (OPA) and the Office of Professional Accountability-Investigations Section (OPA-IS)**

Director, Office of Professional Accountability  
 Seattle Justice Center  
 610 Fifth Avenue, 7<sup>th</sup> Floor  
 Seattle, Washington 98124-4986  
 206.615.1566 (tel)  
 206.615.0763 (fax)

OPA Investigations Section  
 Seattle Municipal Tower  
 700 Fifth Avenue, Room 1640  
 Seattle, Washington 98124-4986  
 206.684.8797 (tel)

206.233.7907 (fax)

Note: the mailing address for both the OPA Director and OPA-IS is:  
Seattle Police Headquarters  
610 Fifth Avenue  
PO Box 34986  
Seattle, Washington, 98124-4986

Information about OPA, the complaint process, OPA Director and OPA Auditor publications and related information can be found on the OPA website: <http://www.seattle.gov/police/opa>

#### **B. OPA-IS Office Hours**

Normal business hours are from 0800–1600 hours (8:00 am to 4:00 pm), Monday through Friday, except on City observed holidays. A telephone answering machine accepts incoming calls during non-business hours. Depending on operational needs, OPA Investigators or other OPA personnel may work on the weekend or holidays. If this occurs, the office is not considered open to the public

#### **C. Emergency After-Hours Contact**

In the case of an emergency or where immediate contact is needed with OPA-IS, contact the Department's Communications Center at 206.625.5011 and information will be conveyed to the OPA Director, OPA-IS Captain, or the OPA-IS Lieutenant.

#### **D. Phone Numbers, Addresses and Radio Call Signs of OPA-IS Personnel**

A list of phone numbers, addresses and radio call signs of OPA Investigation Section personnel will be kept current and maintained in the section's administrative files. This list will be kept confidential and for use only by OPA-IS personnel or the OPA Director. Copies of the list will be provided to all Section personnel.

#### **E. Office Supplies**

Administrative support personnel will maintain and resupply forms and all materials required by OPA-IS staff. It is the responsibility of each person assigned to this Section to notify the support personnel when supplies are low.

- Requests for supplies shall be routed to the Administrative Staff.
- If the item(s) requested are specifically for a particular OPA-IS employee, place the name next to the item(s) listed on the yellow pad.

#### **F. Files, Records and Retention Procedures**

The following is a list of files and records maintained by the OPA Investigation Section:

- OPA-IS Case files
  - All case files, whether classified for full OPA-IS investigation or Supervisor Action, and whether completed or open.
  - Files are retained for the current plus three years, except for cases identified by the Legal Advisor or City Law Department as ones to retain longer.

Examples include cases that are on appeal, subject to a court order requiring their preservation; where there is pending civil, criminal, or disciplinary action, or where pending administrative proceedings make it appropriate to retain the file for a longer period of time. All cases with a Sustained finding shall be retained indefinitely.

- OPA-IS Case Log File
  - A sequential list of all contacts and complaints made to OPA, including those classified for an OPA-IS Investigation, Supervisor Action, or as a Contact Log.
    - Retention: Current plus three years.
  - A log shall be maintained showing any files that have been removed from the OPA-IS office, the date of removal, who signed out the files, and the location of the files during their absence.
- Contact Log File
  - Logged contacts (inquiries) not resulting in an OPA-IS Investigation or Supervisor Action.
  - Retention: Current plus three years.
- Named Employee Computerized Card File<sup>16</sup>
  - Alphabetized index of all employees who have been named in a complaint that was investigated by OPA-IS and is maintained as an electronic Word document. Includes the OPA-IS investigative file number of each case, allegation(s), and finding(s).
  - Retention: All entries except those with “Sustained” findings shall be removed three (3) years from the date named employee notification occurred. In order to ensure accurate data retention, each employee’s listing shall be updated as needed prior to review by non-OPA-IS personnel.
- OPA-IS Sergeant Intake Complaint Log File
  - A daily log completed by the Intake Sergeant or Sergeant-Investigator assigned to intake duties, listing all complaints and inquiries received during a particular business day.
  - Retention: Current plus three years.
- OPA-IS Sustained Complaint File
  - The original file for each complaint in which an allegation was found Sustained, including cases investigated by OPA-IS and Line Investigations (a classification not currently in use).

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<sup>16</sup> This alphabetized list originally was maintained on index cards, prior to being moved to an electronic format. Because this information is available on the AIM complaint tracking system, along with more extensive data concerning complaints, OPA is exploring the idea of discontinuing use of the electronic card file. The current system will be maintained as OPA consults with the Legal Advisor and others who regularly access information via the electronic system.

- Retention: Current plus three years, unless the SPD Legal Advisor or City Law Department identifies the file as one to retain longer because it is on appeal, is subject to a court order requiring preservation, or there are pending civil, criminal, disciplinary, or administrative proceedings.

#### **G. Confidential Information**

Personnel assigned to OPA-Investigations shall maintain the highest degree of confidentiality concerning all matters related to OPA complaints and investigations, including the identity of Complainant and named and witness employees. OPA and OPA-IS personnel will be required to sign a notice regarding confidentiality, a copy of which is attached in the Appendix at \_\_\_\_.

#### **H. Office Security**

The OPA-IS office will be staffed during normal business hours and the front and back doors will remain locked and accessible only by an authorized access card or the four-digit cipher lock number. Departmental personnel not assigned to OPA-IS (including Command Staff), other City employees, citizen complainants and others who want access to the office must use the telephone at the front door. When the telephone is lifted, a bell sounds in the OPA-IS office and OPA-IS administrative support staff or other personnel respond.

The four-digit cipher lock number for the back door is also used on the interview room doors leading to the hallway on the inside of the OPA-IS office. This is to ensure that non-OPA Departmental personnel, members of the public or others visiting OPA-IS will not have unsupervised access to the rest of the OPA-IS office, confidential files, etc.

The four-digit cipher lock number should be changed at least once a year, during the first week of January. It shall be the responsibility of the OPA-IS Captain to make arrangements for the annual access code change.

Support staff are discouraged from allowing members of the general public to enter the OPA-IS office waiting/counter area without sworn personnel being present in the office. Also, there are panic alarm buttons in the administrative support staff area of the OPA-IS office and in the interview rooms, should any OPA staff person need assistance.

Sensitive information shall not be left unattended in areas accessible by non-OPA-IS personnel.

#### **I. Security of Files**

Because of the confidential nature of OPA investigation files and paperwork, all files will be stored in lockable file cabinets. No file is to leave or be shown to any person outside OPA except upon approval of the OPA Director or OPA-IS Captain or his/her designee, as provided by Section 2.04.040 below. File and office security is the duty and responsibility of all personnel assigned to OPA-IS.

The sensitivity of certain investigations, such as those involving criminal allegations where disclosures could adversely affect an investigation, may require special handling to ensure confidentiality.

## **J. Release of Information**

The contents of OPA-IS investigative case files, Supervisor Actions, and Contact Log(s) will not be released without a court order, in response to a request from the SPD Legal Advisor or Public Disclosure Unit, in response to a request from the City Law Department, or under other legal authority, except when an employee is preparing for a *Loudermill* hearing. In that instance, a copy of the investigatory portion of the file may be released to the employee, his/her attorney, or the union representative, without charge.

No individual other than the employee or members of OPA and the Investigation Section may review an employee's OPA-IS file without permission of the employee's Assistant Chief, the Department Legal Advisor, the OPA Director, or the Chief of Police, except pursuant to a court order or by other legal authority.

The OPA Investigation Section shall maintain a record showing which files (originals and copies) have been removed from the OPA-IS office, the date of removal, who removed the files, the location of the files while absent from the OPA-IS office, and the date the files were returned.

An employee may request access to the investigatory portion of the closed OPA Investigation Section file in which the employee was the named employee. Such a request shall be in writing, stating the reasons access is desired. The OPA-IS Captain, OPA Director, or a designee shall consider the circumstances and not unreasonably deny such access. Access to the investigatory portion of the files shall be limited to an in-person review of the file. Photocopies or other duplication of the file shall not be permitted, nor shall any portion of the file, except a copy of the named employee's own statement, be removed from the OPA-IS office.

Where there is a public disclosure or discovery request for an OPA file, a copy of the entire file should be turned over to the Public Disclosure Unit, or SPD Legal Advisor or City Law Department responding to the request. OPA cannot make decisions as to what material in a file should be released or withheld, and must rely on the expertise of those responding to the request for disclosure or discovery.

## **K. Records Purging Procedure**

A project will be implemented, typically during the early spring of each year, to purge OPA-IS case files and records in conformance with the records retention schedule discussed above at pages \_\_\_\_.

The following procedures will be used to accomplish the records purge:

- The Department's Legal Advisor and others from the Legal Unit will be consulted to determine whether any case scheduled to be purged should be retained.
- Each OPA-IS investigative file and Supervisor Action file for the respective year will be individually considered.
- As each case is reviewed for purging, the Complainant and Subject (if different) on the particular file will be checked against the alphabetized list of persons pursuing claims or lawsuits against the City. The Department Legal Advisor maintains this

list. If the Subject and/or Complainant are named in the claimant/lawsuit plaintiff file, the claim or lawsuit file will be checked to see if it coincides with the allegations of misconduct involved with the OPA-IS file. If so, the OPA-IS file will be retained and stored by the Department's Legal Unit. Also, a determination must be made based upon pending discovery requests of which the Department is aware whether any other OPA-IS file the same employee should be retained.

- As a result of the previous steps, three lists will be generated:
  - A list identifying each file that has been purged.
  - A list identifying each file that is being retained by the Department's Legal Unit.
  - A list identifying any file that is scheduled to be purged but is not in the OPA-IS office for any reason, with an action plan to locate the file and determine its retention status.
- When the process has been completed, arrangements will be made for the shred company the Department contracts with at the time to destroy the material scheduled for purging.

#### **L. Mobilization for Unusual Circumstances**

OPA-IS personnel will not normally be directly involved in patrol assignments for disturbances, riots, or other unusual occurrences. However, it is possible that OPA-IS sworn personnel could be ordered into uniform or assigned other non-OPA related tasks in a significant and unforeseen major occurrence. Sworn personnel must be prepared to take police action when necessary, and are required to have riot gear available in the OPA-IS office at all times. Lockers are available for storage of uniforms, weapons, and other police gear.

In the event of a major occurrence where the Department activates the Emergency Mobilization Plan (Gold/Blue Plan) OPA-IS personnel will respond as directed in the Emergency Operations Manual.

#### **M. Call Outs**

OPA-IS Sergeant-Investigators are not assigned to a paid on-call status. If the need should arise for a call out for purposes of performing OPA investigative functions, the OPA Director, OPA-IS Captain, and/or OPA-IS Lieutenant will contact Sergeant-Investigators as needed. The OPA-IS Captain and/or Lieutenant also will respond to the incident and perform other tasks at the direction of the OPA Director.

#### **N. Minimum Staffing Requirements**

There shall be sufficient Sergeant-Investigators on duty to efficiently handle intake duties during normal business hours. The OPA-IS Lieutenant will determine the number of investigators required to meet minimum staffing requirements on any given day.

#### **O. Holidays**

No OPA-IS personnel shall be scheduled to work on any City holiday other than Veteran's Day, except with the advanced approval of the OPA-IS Lieutenant. The office will be closed on all

City holidays. When it is necessary for an OPA-IS employee to work on a City holiday, the employee shall reschedule that holiday for use within Department and union contract provisions.

**P. Overtime**

Overtime work will require the advance written approval of the OPA Director, OPA-IS Captain, or OPA-IS Lieutenant.

**Q. Business Cards**

All OPA-IS business cards are to be of a standard design, as designated by the Mayor and/or Department Heads. The City of Seattle Print Shop (as ordered by Fiscal) shall be the only supplier of business cards for OPA-IS personnel.

- **Required Information**

All business cards for OPA-IS personnel will include the employee's name, rank, and:

Office of Professional Accountability Investigations Section  
700 Fifth Avenue, Room 1640  
Seattle, Washington 98124-4986  
206.684.8797

- **Optional Information**

At the employee's option, a pager number, cellular phone number, and/or e-mail address may be included on business cards.

**R. Telephone and Computer Usage**

The use of OPA-IS telephones and computers shall be in compliance with the policies and procedures outlined in the Seattle Police Department Policies and Procedures Manual.

**S. Public Contact**

It is very important that our daily contact with community members and Department personnel convey our concern and commitment to the people we serve. Whether the contact is by telephone, at the front counter, or in an interview setting, the perception of OPA will be influenced either positively or negatively by each encounter. Professionalism and civility, especially in difficult or challenging situations, is expected of all OPA-IS personnel.

- **Telephone Etiquette**

All OPA-IS telephone calls will be answered politely with OPA-IS personnel promptly identifying themselves to the caller. When applicable, callers should be advised that their intended party is not available and be given the option of leaving a voice mail message.

When personnel know of an upcoming expected absence, the greetings on their voice messaging system should be updated to include that information and identify whom the caller may contact during the employee's absence, if immediate contact is required.

When setting up voice messaging, OPA-IS employees should include direction to call 9-1-1- if the call is an emergency.

- **In-Person Contact**

Individuals coming to the OPA-IS office will always be treated with patience, courtesy and respect. If an individual is behaving in ways causing concern, SMT security will assist in having the person removed.

- **Attire in Public Places**

Personnel assigned to OPA-IS will present a professional image to the public and dress appropriately for the circumstances in which they are working.

## **V. Complaint Intake Process**

### **A. Preliminary Investigation of Complaints**

The Office of Professional Accountability typically receives around 1500 communications each year. A wide variety of administrative misconduct complaints are made under the Seattle Police Department Manual, which sets out policies and procedures to guide SPD employees in professional conduct. The most common allegations raised in OPA complaints include concerns about an employee's attitude or discourteous behavior, use of force, discretion, decisions related to searches, service quality, violations of law, and failure to use Digital In-Car Video.

To ensure prompt, effective, and efficient handling of all communications and complaints, and equitable distribution of the workload, the intake process was developed to evaluate incoming information. Some complaints, such as those related to criminal allegations, officer-involved traffic collisions and officer-involved shootings, are initially reviewed outside OPA, though OPA will assign a case number for tracking and monitoring purposes if a complaint is filed during the outside review process.

### **B. Source of Complaints**

Complaints will be accepted by whatever means they are communicated, including but not limited to complaints made in person, by phone, mail, or email, through the OPA website, or via letter or internal memo.

- To file a complaint through the OPA website, use the following link:  
<http://www.seattle.gov/police/OPA/complaintform.htm>
- To file a complaint in person, visit the OPA-IS office at:  
OPA Investigations Section  
Seattle Municipal Tower  
700 Fifth Avenue, Room 1640  
Seattle, Washington 98124-4986
- To file a complaint by telephone, call OPA-IS at: 206.684.8797.
- To file a complaint by fax, send it to OPA-IS at: 206.233.7907.
- Complaints also can be filed in person, by e-mail or by phone through Seattle's Customer Service Bureau or the Seattle Office for Civil Rights:
  - Customer Service Bureau City Hall  
600 4th Avenue, 1st Floor  
P.O. Box 94826 Seattle, WA 98124-4726  
Email: <http://www.seattle.gov/customerservice/>  
Phone: 206.684-2489



- Seattle Office for Civil Rights  
Central Building  
810 Third Ave, Suite 750  
Seattle, WA 98104-1627  
Email: <http://www.seattle.gov/civilrights/>  
Phone: 206.684-4500
- SPD employees have a duty to assist any person who wishes to file a complaint by:
  - Taking the complaint,
  - Providing specific information to the complainant on where and how to file the complaint, or
  - Immediately putting the complainant in contact with a supervisor or other individual who can assist them with filing their complaint.

See, Seattle Police Manual, Public and Internal Complaint Process, 5.002.II.B.

Complaints can be filed by anyone, including but not limited to the subject of a police incident, a witness, a third party (such as the parent or spouse of the subject), a legal representative, an anonymous person, a supervisor, commander or other SPD personnel, and the OPA Director. OPA also will accept all complaints referred by the Mayor's Office, City Council Members, the Customer Service Bureau, the Seattle Office for Civil Rights, and other referral agencies.

### **C. Assignment of Intake Duties**

OPA strives to have an Acting Sergeant serve as the OPA-IS Intake Sergeant. Due to other organizational demands, personnel are not always available for a temporary assignment to OPA-IS. The procedures outlined here apply whether an Acting Sergeant is handling intake or a regular Sergeant-Investigator. Any reference to "Intake Sergeant" includes an Acting Sergeant filling this role or a regular OPA-IS Sergeant-Investigator assigned intake duties.

When Sergeant-Investigators are assigned intake, it is usually for one day/week to receive all incoming communications. Personnel performing intake duties are discouraged from scheduling anything on their assigned intake duty days. However, there may be times when Department business requires them to be absent and the OPA-IS Lieutenant will assign another Investigator to fill in. An Investigator who requests time off when assigned intake duties should arrange, when possible, for another Investigator to handle the intake duties. The Investigator who took the time off should reimburse the other Investigator by working an equal amount of intake duty time unless otherwise released. Intake duties for an Investigator who is out ill will be distributed among the other available Investigators. Whenever a new Sergeant-Investigator is assigned to OPA-IS, all Sergeants may re-bid for intake duty days by seniority of assignment within OPA-IS.

On occasion, multiple individuals come to the office to file complaints at the same time. Any Sergeant available will assist with such intake, as needed.

#### **D. Gathering of Information During Intake**

Communications received by OPA-IS range from innocuous comments about SPD employees and informational inquiries to the most serious allegations, including criminal misconduct. It is the responsibility of the Intake Sergeant to process all incoming information to initially assess the seriousness of the allegations involved and necessary next steps. This is done by conducting a preliminary investigation and evaluation aimed at answering basic informative questions about the incident, such as:

- Who** – Who was involved? Does the complaint involve a Seattle Police Department employee? Who established the employee's identity and how was that accomplished? Who was present at the time of the misconduct or may know something about it? Who are the parties involved, i.e., subjects, complainants, witnesses, and named employees?
- What** – What happened? Obtain a detailed description of the alleged misconduct. Ask about the circumstances prior to, during, and after the event. What is the complainant's involvement? What are the relationships among the involved parties? What outcome or remedy does the complainant desire from contacting OPA-IS?
- Where** – Where did it happen? Obtain specific information about the location of the police incident at issue, along with addresses, phone numbers and other contact information for all of the parties involved. If the complainant or other party involved is transient, attempt to get a back-up means of contact, such as through a relative or friend.
- When** – When did it happen? Obtain dates and times of the alleged misconduct. When did complainant learn of the alleged misconduct, if complainant is not the subject? Was the SPD employee on or off-duty? If there is any delay in the time of the underlying incident and contact with OPA-IS, ask for an explanation from complainant.
- How** – How did it happen? How did the complainant learn of the alleged misconduct? How can OPA—IS learn more about the incident?
- Why** – Why did it happen? Solicit complainant's explanation for the SPD employee's conduct and complainant's reasons for following up with OPA-IS.

If the Complainant submitted a written statement via mail, email, the OPA website, etc., much of the information needed to assess the situation may be gleaned from the written submission. However, an interview of Complainant should always be conducted, either as an initial matter when Complainant contacts OPA-IS or as follow up to a written statement of complaint.

Some people communicating with OPA will not be pursuing a complaint, but rather asking questions and sharing information that does not involve misconduct. Such a communication is classified as a "Contact Log" and tracked, but generally will not require extensive gathering of more information to assess the event.

If a communication cannot be readily handled as a "Contact Log," but involves a complaint about an SPD employee's conduct, more information will be necessary to fully understand what happened. The preliminary investigation should be handled as quickly as reasonable under the circumstances, since evidence related to an incident may be lost or destroyed, and witnesses' memories may fade with time.

In addition to gathering information from Complainant and others involved, it is important to consider relevant physical evidence. More discussion and a checklist follow below at pages \_\_\_\_.

Complainant and others familiar with the event should be asked about the existence of any photographs, video or other recording of the incident, and how OPA-IS can obtain copies. Consideration should be given as to whether the Intake Sergeant should conduct an immediate site visit to take photographs and search for witnesses and video that could help document what occurred. All SPD reports (General Offense, Use of Force, Parking Citations, Traffic Infraction reports, etc.) related to the incident should be obtained, along with a check for In-Car Video, Holding Cell Video, communication recordings (e.g., 911 calls), and other information routinely generated during a police incident.

Any particularly sensitive or significant complaint should be immediately brought to the attention of the OPA-IS Captain or Lieutenant, who will ensure the OPA Director is alerted to any such complaint.

### **E. Steps of the Intake Process**

The basic steps involved with intake include:

- Intake Sergeant hours are typically 0800 – 1600 hours (8:00 am to 4:00 pm). All calls, letters, OPA website complaints, and walk-in complainants will be routed to the Intake Sergeant for that day.
- Date and time stamp all written communications received.
- The Intake sergeant will log the contact or complaint on the OPA-IS Sergeant's Daily Complaint Log.
- For in-person walk-in complaints:
  - Identify the Complainant and obtain contact information (a back up means to contact Complainant may also be useful).
  - If there is a complaint regarding an SPD Officer's use of force, document the presence or absence of injury.
    - If Complainant claims an injury, obtain a signed Medical Release from the Complainant.
    - Photograph any injury or lack of injury.
  - Conduct a recorded interview of the Complainant (See *Tape-Recording Complainants during the Intake Process* below), and add the statement to the queue to be transcribed by OPA-IS administrative staff or make a note as to why transcription is not necessary.
- Based on your evaluation of the information available, determine whether the communication requires immediate attention or can proceed through the routine intake processing procedure. Matters that should be immediately brought to the attention of OPA-IS commanders and/or the OPA Director include those where criminal allegations against an SPD employee may be involved, complaints where there is developing media attention, and any complaint against a member of the SPD Command Staff, the OPA Director, or OPA-IS personnel. This is not an exhaustive list and Intake Sergeants should always consult with the OPA-IS Lieutenant if unsure about next steps.

- If the communication involves a request for information or other matter that does not amount to a complaint about employee conduct, complete a Contact Log entry.
  - The Contact Log is maintained on the shared J drive.
  - All effort should be made to gather complete contact information, in case further information is needed or the matter is upgraded to a complaint.
  - All documents or other material related to a Contact Log entry is filed and retained for the retention period discussed above at pages 11-12.
  - Sample Contact Log entries can be found in the Appendix at \_\_\_\_.
- If there is prima facie evidence of possible misconduct, complete a Notice of Complaint and a Complaint Report. Further investigation may be needed prior to completing the Complaint Report. A sample Notice of Complaint and Complaint Report can be found in the Appendix at \_\_\_\_.
- If it is not clear whether the communication to OPA involves prima facie evidence of possible misconduct or is something that should be handled as Contact Log, consult the OPA-IS Lieutenant in order to determine how to proceed.
- Begin the process of gathering relevant documents, records, and evidence, such as:
  - General Offense Report, statements, and other reports associated with the underlying incident of the alleged misconduct
  - Use of Force packet
  - Seattle Fire Department/Medic/Ambulance Run Sheets or communications records
  - Computer Aided Dispatch data (call printout)
  - Unit Log or CAD for Unit daily activity report
  - King County Jail and/or Youth Services for prisoner intake information
  - Booking photos
  - Department of Licensing information (DOL)
  - Communication recordings (e.g., 911 call)
  - Video recordings (e.g., in-car, holding cell, business or street security recordings)
  - Photographs or recordings from Complainant or others involved
- Forward the completed Complaint Report to the OPA-IS Lieutenant
  - Indicate what checks for information have been conducted and what documentation has been requested, and whether or not it has been received.
  - Information concerning the complaint and steps taken during the preliminary investigation shall be logged on the Intake Form.
- Intake processing shall be completed as soon as possible.
  - Contact Log entries should be made the day of the contact.
  - The Complaint Report generated during the intake process must be forwarded to the OPA-IS Lieutenant within seven days of the initial communication from complainant.

- Any actual or anticipated delay in completing the Contact Log entry or Complaint Report should be discussed with the OPA-IS Lieutenant and documented on the Intake Form.

#### **F. Recording Complainant's Interview at Intake**

There are differing opinions on whether a complainant should provide a recorded statement during the initial intake procedure, though the standard OPA-IS practice is to always seek a recorded statement while the Complainant is initially present or in contact by phone.

There are advantages to immediately obtaining a recorded statement. Complainant may be transient and the first contact may be the only opportunity to conduct an interview or solicit a comprehensive statement from Complainant. Obtaining comprehensive statements at the beginning of the complaint process can speed up the evaluation and investigation of the complaint, depending on the nature of the statement offered, and useful in assessing credibility.

However, it is important to be aware of potential disadvantages to obtaining a recorded statement at the outset. The Sergeant-Investigator ultimately assigned the case may prefer to conduct his/her own interview and Complainant may not want to provide multiple recorded statements. There is often limited information available at the intake stage and Complainant's initial statement may be incomplete, necessitating an additional interview before the investigation proceeds.

If Complainant refuses to provide a recorded statement for any reason, whether sought during intake or later, note in the Intake Form or Follow Up Form the reasons a statement was not taken. OPA cannot compel a complainant or non-employee witness to give a statement, recorded or not.

#### **G. Interpreters and Translators**

As stated in the Seattle Police Department Manual, Section 15.270, "Our Department values exceptional responsiveness to special community needs, and equal protection in its service to all citizens. Whenever possible, sign language interpreters or a non-English translator shall be utilized when dealing with deaf persons or persons who are non-English speaking." In conducting OPA-IS intake, investigations or other OPA services, if a translator or interpreter is necessary to facilitate communication, refer to 15.270 for guidelines and resources for procuring assistance. A copy 15.270 can be found in the Appendix at \_\_\_\_.

#### **H. Complainant Information Packet**

All efforts will be made to follow up with each person who files an OPA-IS complaint by sending a letter or email acknowledging receipt of the complaint and providing information or a brochure that explains the OPA-IS complaint handling process. This "Complainant Information Packet" will be sent within five business days after the complaint is received and will reference the assigned Case Number and provide the Intake Sergeant's name and contact information. Sample Complaint Information Packet correspondence can be found in the Appendix at \_\_\_\_.

## **I. Use of Force Documentation**

Whenever a complaint alleges physical injury resulting from an unnecessary or excessive use of force, an immediate effort shall be made to photograph the alleged victim showing the presence or absence of visible signs of injury. A signed Medical Release should also be obtained, and information should be sought from any treating physician or hospital, along with reports from SFD or other attending medics. Photographs should also be obtained of any officer injured in the course of the incident. Use of Force intake and investigations are discussed in more detail at page \_\_\_\_\_.

## **J. OPA Mediation Program Option**

Some complaints, particularly those involving potential miscommunication or misperception between the complainant and an officer or other employee, may be suitable for mediation. Mediation is an alternative to the traditional means of handling complaints, either through the Supervisor Action process or a full investigation. When the OPA Director and OPA Auditor review proposed complaint classifications, consideration is given as to whether a complaint should be referred for mediation consideration. Information about the OPA Mediation Program can be found in the Appendix at \_\_\_\_\_.

Unless the complaint involves particularly egregious allegations or appears to the Intake Sergeant to be otherwise inappropriate for mediation, the mediation alternative should be briefly discussed during intake. Let the complainant know that some cases are selected for mediation, that it is an alternative to traditional case processing, that mediation would allow for an opportunity for the complainant to communicate his/her concerns directly to the involved employee, and that it is facilitated by professional mediators from outside the Department. The mediation process is voluntary and will occur only if both the Complainant and named employee agree.

Ask whether the complainant would be interested in this option if the case is selected for mediation, or whether he/she would like to receive more information about the OPA Mediation Program. Note in the Intake Form log whether or not the complainant expressed interest in mediation or the reasons the mediation option was not discussed. Include a Mediation Program brochure or more detailed description of the program in the Complaint Information Packet if complainant requests more information, or refer the complainant to information available on OPA's website: <http://www.seattle.gov/police/OPA/mediation.htm>

If the Intake Sergeant believes a complaint is particularly well suited for mediation, note the reasons on the Intake Form.

## **K. Conflict of Interest**

The Seattle Police Manual, Standards and Duties, 5.001.VI.A.1.a. provides: "Employees shall not engage in enforcement, investigative or administrative functions that create conflicts of interest or the appearance of conflicts of interest. For example, employees shall not be the primary investigators of crimes where they are the victim, nor effect arrests – except in an emergency – of family members, business associates, or social acquaintances. Employees shall exercise discretion in favor of recusing themselves from any process that might reasonably be expected to create a conflict or the appearance of a conflict of interest."

As OPA-IS Sergeants and other personnel handle complaint intake, investigations and other OPA functions, any actual or apparent conflict of interest with the parties or subject matter involved should immediately be brought to the attention of the OPA-IS Lieutenant, Captain, or OPA Director. The fact that OPA-IS staff might have previously worked with employees named or witnesses in OPA complaints does not automatically create a conflict. However, if any previous work experience or other relationship with anyone involved in a complaint might impact (or have the appearance of impacting) neutrality in handling OPA matters, the issue should be reviewed with the OPA-IS line of command.

#### **L. Non-Retaliation**

Per Department policy, “no employee shall retaliate against any person who initiates or provides information pursuant to any citizen or internal complaint, or against any person who provides information or testimony at a Department hearing, because of such person’s participation in the complaint process. Such retaliation may be a criminal act and/or constitute separate grounds for discipline.”<sup>17</sup> OPA Investigators and other personnel should be cognizant of facts indicating retaliation against a complainant, in addition to the original police incident involving the individual. Also, OPA personnel must not take any action in retaliation for a person having provided information pursuant to an OPA complaint or otherwise participated in the complaint process.

#### **M. Contact with Prosecuting Authorities**

An OPA Sergeant-Investigator may be in contact with a prosecutor’s office to monitor the status of criminal charges pending against an officer, or to clarify the status of criminal charges against a complainant, to determine if there is information relevant to the OPA investigation. However, OPA Investigators and other personnel must avoid retaliation or the appearance of retaliation in contacting a prosecuting authority. Where there is a filing recommendation regarding the complainant, the recommendation should be reduced to writing and approved through the OPA chain of command, up to the OPA Director. Otherwise, it is the policy of this office that Sergeant-Investigators shall not discuss filing decisions regarding OPA complaints with prosecuting authorities.

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<sup>17</sup> Seattle Police Manual, 5.002.II.H.

## **N. Complaint Notification and Investigation Timelines**

Most OPA complaints involve sworn police officers through the rank of Sergeant, who are all members of the Seattle Police Officers' Guild (SPOG). Though involved employees may belong to other bargaining units and other collective bargaining agreements (CBAs) may be implicated, OPA often defaults to SPOG requirements regarding notice and timelines, as they are the most stringent. If a named or witness employee belongs to a bargaining unit other than SPOG, the appropriate CBA should be consulted, particularly for cases classified for full investigation by OPA-IS. Relevant provisions from the SPOG contract can be found in the Appendix at \_\_\_\_\_. Copies of all CBAs covering different Department employees, including the SPOG contract, can be found on the Department's intranet website.

### **1. 5-Day Notice of Complaint**

- Prepare a Notice of Complaint, except where criminal allegations are involved or where notification would jeopardize the investigation, such as where there are on-going acts of misconduct.
- Upon receipt of a complaint, OPA-IS has five calendar days (except in criminal cases or where notification would jeopardize the investigation) to send notice to the named employees that a complaint has been received. Electronic notice is effectuated by sending an email to the named employee, with a copy of the 5-day Notice of Complaint attached. A copy of the email should be downloaded to the complaint file, providing evidence of the day and time notice was sent to the employee.
- Where the employee who allegedly engaged in misconduct is unknown, the Intake Sergeant should still initiate a Notice of Complaint. If the identity of the involved employee cannot be determined within 5-days, SPOG must be notified of the complaint involving an unknown employee. If the involved officer is later identified, amend the original Complaint Report and the Notice of Complaint. Provide electronic notice as outlined above. The 5-day period begins once the identity of the involved employee becomes known and the employee can become a "named employee."
- Prepare and send the 5-day Notice of Complaint if it appears that the allegation will be classified as anything other than a Contact Log.

### **2. 30-Day Classification Notice**

Within 30 days of OPA-IS receiving notice of a complaint, OPA-IS must issue a classification report. This report is generated through AIM and is titled "Investigation Summary Report," though often referred to as the "2.7" or "complaint." The 30-day notification is to be sent electronically, with a copy of the Investigation Summary Report attached. A copy of the classification report will also be sent electronically to the named employee's captain or equivalent non-sworn supervisor, and to the named employee's collective bargaining unit. A copy of the email should be downloaded to the file, providing evidence of the date and time the classification report was sent.

The classification report identifies Complainant, the named employee(s) and witnesses, if any, includes a brief factual summary of the underlying incident and allegations made, and lists the



Seattle Police Department Policy Manual section(s) implicated, along with other information concerning the event and parties. The report also notes whether the complaint will be classified for Supervisor Action or OPA-IS investigation.

### **3. 180-Day Investigation Deadline**

If a complaint is classified for investigation, it must be completed within 180 days of the misconduct complaint being filed with OPA-IS, or received by a Department sworn supervisor.

It can be difficult to determine when supervisory involvement starts the 180-day timeline and, following grievances challenges by SPOG on the issue, it was agreed that, “Receipt of the complaint by a Department sworn supervisor...is defined as a communication received by a Department sworn supervisor alleging facts that, if true, could, without more, constitute a violation of the Department’s Policies and Procedures Manual.”<sup>18</sup>

Despite this definition, it still is not always clear when alleged conduct might have come to the attention of a supervisor and started the 180-day timeline; thus, it is prudent to be conservative and strive to have all investigation and completed within 180 days from the *incident* date.

The investigation is deemed complete, for purpose of computing the 180-day timeline, once a proposed Disciplinary Action Report (DAR) is issued, following a recommended finding of Sustained on any allegation in the complaint. Thus, 180-day clock stops for the *Loudermill*<sup>19</sup> meeting, review by the Chief of Police, and for issuance of the final DAR. The 180-day clock does not start again unless further investigation takes place.

If the 180-day deadline is not met, discipline cannot be imposed in a case where the employee was found to have engaged in misconduct. If there is no finding of misconduct, failure to meet the 180-day deadline has no practical effect. However, OPA strives to complete all investigations well within the 180-day timeframe.

Consult the appropriate CBA for the named employee to ensure there is compliance with all notice and investigative timelines.. The consequences for missing a deadline could include an otherwise culpable named employee avoiding responsibility for his or her misconduct.

Per SMC 3.28.812, “If no discipline results from an OPA complaint because an investigation time limit specified in a collective bargaining agreement between the City and the subject employee’s bargaining unit has been exceeded, within 60 days of the final disposition of the complaint investigation the OPA Director shall make a written explanation of the nature of the allegations in the complaint and the reason or reasons the time limit was exceeded. This requirement applies whether the OPA recommends that the complaint be sustained or declines to make a recommendation because the time limit has been exceeded. The written explanation shall be included in the OPA case file.”

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<sup>18</sup> Agreement between the City of Seattle, Seattle Police Department and SPOG dated October 27, 2008.

<sup>19</sup> Before discipline involving a suspension, demotion or termination is imposed, an SPD employee is entitled to a meeting with the Chief of Police or his designee, to present mitigating information or anything else the employee wants considered before the complaint disposition and discipline is finalized. This is referred to as the “*Loudermill*” meeting, pursuant to *Loudermill v. Cleveland Board of Education*, 470 U.S. 532 (1985).

#### **4. 3-Year Statute of Limitations**

For SPOG and SPMA members, no disciplinary action will result from a misconduct complaint where the complaint is made to OPA-IS more than three years after the date of the incident that gave rise to the complaint, except:

- In cases of criminal allegations, or
- Where the named employee conceals acts of misconduct, or
- For a period of thirty (30) days following a final adverse disposition in civil litigation alleging intentional misconduct by an officer.

#### **5. 3-Years Plus the Current Year Retention Period**

OPA-IS files shall not be retained longer than the current year plus three from the date the investigation was initiated, except for cases that are subject to a court order requiring preservation, or where pending civil, criminal, disciplinary, or administrative proceedings make it appropriate to retain the file for a longer period of time. Files retained beyond the routine retention period are maintained by the Legal Advisor, and not OPA.

### **VI. Complaints of Criminal Misconduct**

#### **A. Introduction**

SPD policy requires that all employees “report to their supervisor as soon a practical (and before the start of their next work shift) any of the following circumstances occurring in any jurisdiction:

1. They are the subject of a criminal investigation, criminal traffic citation, arrest, or conviction,
2. They are the respondent of an order of protection, restraining order, no contact order, anti-harassment order,
3. Their Washington driver’s license is expired, suspended, or revoked, or if they obtain an ignition interlock driver license.”<sup>20</sup>

In 2008, in response to a recommendation from the Police Accountability Review Board (PARP), the City and SPOG agreed to specifically prohibit OPA from conducting criminal investigations.<sup>21</sup> Further, there “shall be no involvement between OPA and specialty unit investigators conducting the investigation.”<sup>22</sup> However, the Collective Bargaining Agreement (CBA) provision adopted also notes that “pending civil or criminal matters involving an officer should not delay OPA investigations...simultaneous OPA and criminal investigations may be conducted. In the event the Department is conducting an OPA investigation while the matter is being considered by a prosecuting authority the 180-day timeline provision continues to run.”<sup>23</sup>

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<sup>20</sup> Seattle Police Manual, 5.002.II.G. This provision also covers procedures for seeking an “Employer Declaration for Ignition Interlock Device.”

<sup>21</sup> SPOG CBA, 3.7.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

Though there is some argument to the contrary, SPOG takes the position that the 180-day timeline continues to run if the Department itself is criminally investigating an officer, even if OPA has not begun an administrative investigation.<sup>24</sup> Once SPD refers the matter for review to the King County Prosecutor's Office (KCPO) or City Law Department, the 180-day clock stops, and does not resume until there is a decline notice or verdict in a criminal trial, whichever is later.<sup>25</sup> However, as noted above, if OPA initiates an administrative investigation while the matter is pending with the prosecuting authority, the 180-day timeline continues to run.

If the alleged criminal misconduct takes place in another jurisdiction and the involved officer is criminally investigated or prosecuted by an outside agency, the 180-day timeline is suspended until OPA initiates an administrative investigation.<sup>26</sup> While "the Chief of Police may, at his/her discretion, request that an outside law enforcement agency conduct a criminal investigation" of alleged criminal misconduct which occurred within the Department's jurisdiction, it is not clear whether the 180-day timeline is tolled under such circumstances.<sup>27</sup> While the Chief has made such requests of outside agencies, the timeline issue has not been squarely confronted.

Thus, while OPA has the power to conduct an administrative investigation concurrently with any criminal investigation or prosecution underway, the 180-day clock will run and OPA and the Department could be put in the position of making a finding on an administrative policy violation related to the criminal charge, prior to a criminal determination. If OPA waits to initiate the administrative investigation until after the criminal process is complete, "The criminal investigation shall become part of the administrative investigation."<sup>28</sup> It has been the norm for OPA to wait for the conclusion of the criminal process prior to beginning its investigation, though it handles the issue of whether to proceed on a case-by-case basis. The pros and cons of conducting concurrent vs. sequential criminal and administrative investigations are discussed below.

#### B. OPA's Administrative Investigation Process with Criminal Complaints

The OPA Director or OPA-IS Captain or Lieutenant generally receives information from the employee's supervisor or someone else in the chain of command that an employee is the subject of a criminal process, pursuant to the reporting requirement noted above. (Failure to report can result in a separate misconduct allegation.)

1. When OPA receives notice an employee is the subject of a criminal process, is a respondent of an order of protection, restraining order, no contact order, or anti-harassment order, or an employee's driver's license is expired, suspended, or revoked, or if they obtain an ignition interlock driver license, an OPA complaint is generated.

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<sup>24</sup> SPOG CBA, 3.6.B, 3.6.B.2, and 3.7.

<sup>25</sup> SPOG CBA, 3.6.B.

<sup>26</sup> SPOG CBA, 3.6.B.2.

<sup>27</sup> SPOG CBA, 3.7.

<sup>28</sup> Ibid.

2. A preliminary investigation is conducted, usually limited to obtaining a copy of the incident report or other associated paperwork generated at the outset of the incident.
3. At a minimum, a criminal Violation of Law allegation is made in the OPA complaint, though other allegations may be added at the conclusion of the criminal process as more information is obtained.
4. The usual 5-day and 30-day notice requirements for OPA complaints do not apply when criminal allegations are involved.<sup>29</sup> Instead, notice is given once the criminal matter is concluded and OPA moves forward with the administrative investigation.
5. OPA then puts the case into monitoring status, while the criminal process is pending.
6. If the criminal matter is to be investigated by the Department, OPA determines the appropriate investigative unit with expertise in the type of criminal conduct alleged and the OPA Lieutenant refers the matter to the Assistant Chief for the Criminal Investigations Bureau to oversee the criminal investigation.<sup>30</sup> Generally, the appropriate unit is obvious from the nature of the complaint, though some facts merit discussion with the Assistant Chief for the Criminal Investigations Bureau or other commanders before a final decision is made.
7. The OPA-IS Lieutenant drafts the referral memo that is sent to the Criminal Investigations Bureau. An example can be found at Appendix \_\_\_\_.
8. The Sergeant-Investigator assigned the case for monitoring is expected to check on the status of the associated criminal investigation and/or prosecution review at least every two weeks, unless information is available about the process that indicates a check every 30 days is appropriate.
9. Once there is a decline notice or verdict or other conclusion to the criminal investigation, OPA initiates the administrative investigation. After an initial review of the criminal investigation, the OPA-IS Lieutenant makes a recommendation to change the Violation of Law charge to an administrative allegation, and to add any other administrative allegations that might apply.
10. As per the usual complaint classification process, the OPA Director and OPA Auditor review the Lieutenant's recommendation and changes are made as needed.
11. The assigned Sergeant-Investigator proceeds with the investigation and all other review and discipline procedures outlined for non-criminal complaints are followed.

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<sup>29</sup> SPOG CBA, 3.6.A.

<sup>30</sup> SPOG CBA, 3.7.

### C. Tracking Criminal Complaints

OPA has set up several systems for tracking criminal complaints that are being investigated or prosecuted before OPA conducts an administrative investigation.

1. The Sergeant-Investigator assigned the case for monitoring tracks the 180-day timeline, aware of the impact of whether it is being investigated internally or by an outside jurisdiction, or whether it has moved for review by the prosecutor.
2. OPA and the Assistant Chief of the Criminal Investigations Bureau maintain a list of all pending criminal cases against SPD employees, whether being investigated internally, externally or are under review by a prosecutor. The OPA Director, OPA-IS Captain and Lieutenant meet with the Assistant Chief of the Criminal Investigations Bureau once a month to review the status of these cases and to discuss any concerns, including timeline issues.
3. The OPA Director, OPA-IS Captain and Lieutenant meet with the Chief of Police every two weeks to review all pending criminal cases, along with other OPA cases under investigation.
4. The OPA Director and OPA Auditor review all open OPA cases on a monthly basis, and the Director follows up on any questions from the Auditor concerning the status of any criminal complaint.

### D. Complaints involving an Allegation of Unnecessary Use of Force

Complaints involving allegations of unnecessary use of force are on the more common types and investigated by OPA. The complaints can involve issues regarding the force used and/or issues about whether or how the force was reported and reviewed.

All reportable uses of force are reviewed through the involved employees' chain of command. There are specific requirements as to what is entailed in that review. Before a use of force receives a final sign off from an Assistant Chief, the Force Review Board considers all aspects of the incident and can request that more information be collected, if necessary. The Force Review Board is not disciplinary, but can refer any issue for review by OPA if it appears that misconduct might be involved. The Force Review Board can also follow up with recommendations about training, equipment, or policy questions if any are discovered during the review process.

When the use of force entails an officer-involved shooting, the incident is initially screened through the Firearms Review Board. Like the Force Review Board, the Firearms Review Board will refer any policy violations discovered during its review to OPA for investigation.

The Force Investigation Team (FIT) is called out for Type III uses of force, use of force where there is evidence of criminal conduct or misconduct on the part of an officer (conduct-based response), for in-custody deaths, and serious assaults on officers. The standard response for FIT when engaging in a conduct-based response is to send the Homicide Commander, Homicide Sergeant, and a Training representative (in a non-

investigative role) to the scene of the use of force incident. The FIT group will not compel statements from the officers. The focus will be to preserve evidence and identify witnesses. The following business day, the misconduct portion of the FIT investigation will be transferred to OPA.

If FIT does not identify any misconduct to refer to OPA, it will follow its protocol in protecting and preserving evidence, identifying and interviewing witnesses, conducting initial and follow-up interviews of involved officers, and summarizing the incident in a report. The use of force will be reviewed by the Force Review Board, which also can refer any potential misconduct to OPA.

E. Concurrent vs. Sequential Criminal and Administrative Investigations and *Garrity* Protected Statements

As outlined above, OPA has instituted procedures build on the assumption that most complaints involving criminal misconduct will be addressed outside OPA, before OPA begins its investigation, though OPA monitors the criminal process. Of course, there are disadvantages to waiting for the conclusion of the criminal process before completing the OPA administrative investigation. Though OPA receives a copy of and can rely on the criminal investigation, if it wants to re-interview witnesses, memories may fade and witnesses may become unavailable. Officers apparently deserving of discipline may have many months pass without discipline being imposed. OPA and the Department cannot control the speed with which KCPO or the Law Department makes filing decisions or pursues a criminal trial. Ultimately, the public may experience frustration that the process is so time consuming, and trust and respect for the criminal justice process, OPA and the Department suffers.

However, though OPA has the authority to conduct its investigation concurrently with a criminal investigation or prosecution, the disadvantages of doing so include: (1) OPA cannot be involved with the criminal investigation and would need to replicate investigative steps taken by criminal investigators. Waiting until after the criminal investigation and prosecution, if there is one, means that OPA can rely on the work done during the criminal investigation, while doing further investigation where the earlier one is lacking; (2) Unlike criminal investigators and prosecutors, OPA can compel the named employee's interview, but would need to guard against its release if done before criminal proceedings concluded; (3) If OPA initiates an administrative investigation while criminal charges are investigated or prosecuted by an external agency, or while the case is pending before KCPO or the City Law Department, the 180-day clock runs. This means that OPA cannot rely on the work done by criminal investigators, must complete its investigation though some civilian witnesses might be reluctant to provide testimony a second time, and must interview the named employee before criminal charges have been prosecuted; (4) There are concerns that OPA's investigation could taint prosecution efforts, since interviewing witnesses more than once can result in conflicting statements that undermine the criminal process; and, (5) If the Department imposes discipline based on an OPA investigation prior to the conclusion of the administrative process, the criminal penalty might be more serious than the administrative, but the Department would be unable to retroactively change the discipline imposed.

In addition, there is the issue of the timing of the interview of the named officer alleged to have engaged in criminal misconduct. Under the authority of the Seattle Chief of Police, officers can be ordered by OPA to submit to an interview concerning alleged misconduct, and failure to cooperate can be grounds for discipline, up to and including termination.<sup>31</sup> However, under *Garrity v. New Jersey*, police officers are not required to sacrifice their right against self-incrimination in order to retain their jobs. 385 U.S. 493 (1967). An officer cannot be compelled, by the threat of serious discipline, to make statements that may be used in a subsequent criminal proceeding. Further, an officer cannot be terminated for refusing to waive his Fifth Amendment right to remain silent. *Gardner v. Broderick*, 392 U.S. 273 (1968). Thus, if an officer gives a compelled statement, it is protected under *Garrity* and cannot be used in a subsequent criminal prosecution, though may be used for Departmental investigation purposes.<sup>32</sup> In the end, the decision as to whether to conduct concurrent or sequential investigations when criminal misconduct is alleged must be made on a case-by-case basis.

If OPA does interview the named officer while criminal charges are pending (or before they are even pursued), the *Garrity* Advisement given at the outset of the interview is intended to provide assurance that the officer's statement will not be used in any criminal prosecution. In the limited circumstances when an officer's *Garrity* protected statement is part of an OPA investigation reviewed for potential criminal charges, the statement is placed in a sealed envelope, with the contents identified on the outside, along with a notation that the statement is *Garrity* protected. While the rest of the OPA investigative file is provided to the prosecutor, the *Garrity* protected statement is withheld, though its existence should be noted in the transmission cover memorandum.<sup>33</sup>

## **VII. Complaints naming the Chief of Police or OPA Personnel**

The Department's policy manual provides that the Chief of Police or his designee shall appoint an investigator from another Department Section or entity within the Department for complaints directed at members of the Office of Professional Accountability.<sup>34</sup>

Where the Chief of Police is named in a complaint filed with the OPA, the OPA Director consults with the Mayor's Office to identify an appropriate City authority outside OPA or an independent investigator who will conduct any investigation necessary.

If a matter involving the Chief or OPA personnel is being investigated outside OPA, someone from OPA, usually the OPA-IS Captain or Lieutenant, will consult with the outside investigator to ensure notice, timelines, representation rights, and other procedures are followed.

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<sup>31</sup> Seattle Police Manual, 5.002.II.F.

<sup>32</sup> The practical application of *Garrity* is complicated as there are many unsettled issues involved, such as when an officer's statement is considered "coerced," whether *Garrity* extends to witness officers vs. the primary officer involved in an incident, and whether *Garrity* can/should be asserted routinely in incident and use of force reports.

<sup>33</sup> If the prosecutor does obtain a copy of the *Garrity* protected statement, the 9<sup>th</sup> Circuit has held that transmittal of the statement, which was then used to formulate charges against the named police officer, did not violate his civil rights. *Gwillim v. City of San Jose*, 929 F. 2d 465 (9th Cir 1991).

<sup>34</sup> Seattle Police Manual, 5.002

## **VIII. Complaints involving EEO matters**

Complaints from SPD employees concerning workplace harassment or discrimination are generally handled by an EEO Sergeant-Investigator who works outside OPA, though may report to the OPA Director. An Equal Employment Opportunity (EEO) complaint is an accusation of misconduct based on race, creed, color, national origin, age, gender, sexual orientation, marital status, political ideology, parental status, religion, ancestry, or mental, physical, or sensory handicap. Workplace harassment is prohibited by law, when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of employment,
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Complaints may be referred to OPA that essentially involve EEO matters, which should then be referred to the EEO Sergeant. Because it is sometimes difficult to discern if OPA misconduct is involved or if the complaint primarily entails EEO concerns, the OPA Sergeant-Investigator should always consult with the OPA-IS Lieutenant about how to handle intake in such situations. The OPA Director should be consulted if needed. Complaints referred for EEO processing should be documented in the Contact Log.

## **IX. Complaint Tracking in AIM**

The Administrative Investigations Management (AIM) system provides a means for OPA to document and track all OPA complaints and investigations. With AIM, the case investigation status and deadlines for completing each stage of the process from intake to closure can be monitored, the complaint history for an employee or complainant can readily be accessed, and reports to assist in OPA case management and to report out to the Department and public about complaints trends are easily produced. Detailed instructions for using AIM, including how to log in for the first time, are available on the OPA shared drive under "AIM Manuals." The OPA Director's Assistant is the AIM Administrator for the Department and a very good resource if there are questions about the system.

All complaints, whether ultimately classified for Supervisor Action or OPA-IS investigation, are numbered consecutively starting with 0001 at the beginning of each year (e.g., IS 13-0001 or SA 13-0001). When a new complaint is received by OPA, and after making an entry in the daily Intake Log, an AIM number is pulled. If the Intake Sergeant is not sure if the matter should be classified as a Contact Log or complaint, the OPA-IS Lieutenant or the Sergeant-Investigator assisting with complaint classification should be consulted. Though the case is unclassified at this point, this allows the Intake Sergeant to begin entering information about the incident, including date and location, contact information for complaint and witnesses, the identification of the named employee, and a complaint narrative. Once the allegations associated with the complaint have been determined, a proposed classification is made and noted in AIM, and the preliminary investigation proceeds or the classification is prepared for review by the OPA Director and Auditor.



As the case moves forward, it is the responsibility of the person handling the case at that point to make a note in AIM of a change in case status and role. For example, when the Sergeant-Investigator completes the investigation and forwards the hard copy case file for review by the OPA-IS Lieutenant, the AIM completion date should be noted. Routinely entering this information is vital to the complaint tracking function and helps ensure that timeline requirements are met.

The OPA Director is required to report on aggregate data concerning the race and gender of both complainants and named officers. As the AIM fields are being filled in by the Intake Sergeant, it is very important to identify the race and sex of complainant, if possible. When interviewing complainant, indicate that this is voluntary information, but that it very useful as the Director analyzes complaint trends and reports to the Department about the nature of complaints received by OPA. If a Sergeant-Investigator is assigned a case where complainant's race and/or gender have not been identified in AIM, attempt to collect this information, either directly from complainant or through SPD incident documentation associated with the case.

On a monthly basis, the OPA Director's Assistant prints a copy of AIM reports listing all open OPA-IS investigations and Supervisor Actions for the OPA Director and OPA Auditor. They confer with each other about the status of cases approaching 180-day deadline or where there is a question as to why an investigation is not proceeding as expected. Input from the OPA-IS Captain and Lieutenant is sought when needed. In addition, the OPA Director worked with her Assistant to create a similar AIM report with a field for notes, allowing information that is not collected by the AIM fields to be tracked, such as when there is an extension on the 180-day timeline. This report is used with the OPA-IS Captain and Lieutenant for internal case management.

## **X. Complaint Classification Process (including Mediation Referrals)**

Once the Intake-Sergeant completes the preliminary investigation into a complaint, the Complaint Packet is forwarded to the OPA-IS Lieutenant (or a designated Sergeant-Investigator assisting the Lieutenant).

- The next step in the process is a review of the Complaint Packet to determine how the complaint should be classified – for handling by the named employee's Supervisor (Supervisor Action) or for further investigation (OPA-IS Investigation).<sup>35</sup>
  - Complaints involving less serious issues that would not likely result in discipline are classified for Supervisor Action (SA). Complaints of low-level rudeness or decision making by an officer that is appears within his authority are examples of cases more likely to be classified as an SA. If the named employee has had repeated complaints involving similar allegations, the matter may be upgraded for a full investigation. SAs are referred to the named employee's supervisor for specific follow-up as directed by OPA. The SA process is discussed in more detail at page \_\_\_\_\_.

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<sup>35</sup> Historically, OPA used five complaint classifications: Contact Log, Preliminary Investigation Report (PIR), Supervisor Referral (SR), Line Investigation (LI), and OPA-IS Investigation. The system was complex and confusing for citizens, officers and others concerned with the OPA complaint process. In 2010, the OPA Director, OPA Auditor and OPA Review Board initiated a review of both the OPA complaint classification and findings systems and recommended changes in a report issued in August 2011. OPA instituted the recommended changes as of January 1, 2012. For a copy of the August 2011 Joint Report, see: [http://www.seattle.gov/council/OPARB/reports/2011opa\\_classifications\\_findings.pdf](http://www.seattle.gov/council/OPARB/reports/2011opa_classifications_findings.pdf)

- Complaints involving more serious or complex allegations, or involve an employee with a pattern of similar prior complaints of a less serious nature, are classified for an OPA-IS Investigation (IS). Allegations related to unnecessary use of force, improper search, and violations of criminal law are examples of cases that will be classified for a full investigation.<sup>36</sup> The investigation process, range of findings, review steps, and discipline are covered in detail beginning at page \_\_\_\_\_.
- The OPA-IS Lieutenant reviews the Complaint Packet, which includes the complaint, the Intake Form that lists all steps taken during the preliminary investigation, and the documents and other information collected.
- In some instances, all pertinent information is collected during the preliminary investigation and no further investigation appears necessary. In other cases, more investigation will be required, but there is sufficient information available to make a classification decision.
- If there is information that has been requested but not yet received, or otherwise needs to be collected, the Lieutenant determines if the information is necessary before making a classification decision.
- The Lieutenant returns the Complaint Packet to the Intake Sergeant if further preliminary investigation is required.
- If the preliminary investigation is complete, the Lieutenant makes a preliminary classification decision (SA or IS), which is not final until reviewed by the OPA Director and OPA Auditor. This preliminary classification is noted on the Investigation Summary Report (2.7).
- In certain cases, such as when a named employee has received repeated complaints about similar conduct, a copy of the employee's OPA complaint history is run in AIM and included for review by the OPA Director and OPA Auditor, as this might impact the classification decision. Directions for running the AIM complaint history are included in the Appendix at \_\_\_\_\_.

After the OPA-IS Lieutenant has reviewed the preliminary investigation on a complaint and made a preliminary classification decision, the OPA Director and OPA Auditor review the matter.

- The OPA-IS Lieutenant forwards the Investigation Summary Report and other information collected during the preliminary investigation to OPA-IS Administrative Staff.
- Once a week, all complaints that have completed the preliminary investigation process and been reviewed by the Lieutenant and preliminarily classified are gathered and copied for review by the OPA Director and OPA Auditor. This is referred to as the Intake Packet.
- The Intake Packet includes a cover memorandum that lists the preliminary classification and AIM number for all new complaints ready for review,

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<sup>36</sup> Previously, some investigations were referred to the named employee's line of command for handling, referred to as a Line Investigation (LI). These investigations were required to follow all of OPA and contractual guidelines and could result in discipline. Out of concern for the quality of some LIs, OPA stopped referring investigations to the line in 2011. There is benefit to have the line of command involved in handling some investigations, but OPA will not resume referrals to the line without further consideration and training.

along with a copy of the Investigation Summary Report (2.7), pertinent documents and available evidence from the preliminary investigation. The memorandum also lists all OPA-IS investigations that are completed and ready for review by the OPA Auditor. Review of completed investigations is discussed below at page \_\_\_\_.

- OPA-IS Administrative Staff prepare the Intake Packet and deliver a copy to the OPA Director and OPA Auditor.
- The OPA Director and OPA Auditor meet (at least) once a week to discuss the current Intake Packet, following their individual review. The meeting generally takes place at the OPA-IS office so they can immediately follow up on any questions or missing information.
- Each new complaint and preliminary investigation is considered to ensure that all information needed for classification has been collected, to consider whether the allegations listed in the Investigation Summary Report cover all concerns raised by the complainant, to consider whether allegations or named employees should be added or deleted, to discuss the preliminary classification made by the OPA-IS Lieutenant, to check on any timeline issues, and to consider whether the complaint should be referred to mediation.
- The OPA Director makes the final decision regarding complaint classification, following this consultation with the OPA Auditor. The OPA Director notes on the Intake Packet cover memorandum any changes to the Lieutenant's preliminary classification or the initial allegations listed in the Investigation Summary Report, and whether there is a mediation referral.
- Occasionally, notes about follow-up on a specific case also might be made on the memorandum. Copies of the Intake Packet memorandum with the OPA Director's notes are distributed by Administrative Support Personnel to the OPA-IS Captain, Lieutenant and others who have been involved in intake, along with the OPA Auditor and any Sergeant-Investigator assigned an investigation where follow-up notes have been made. The OPA Director retains a copy.
- If the OPA Director has changed the classification on a case, Administrative Support Personnel will enter the change in AIM and 30-day Classification Notices will be issued for all cases classified for investigation.
- The OPA-IS Lieutenant then assigns cases classified for investigation, if an assignment has not already been made. As discussed elsewhere, it is the Sergeant-Investigator's duty to alert the OPA-IS Lieutenant if there is any possible conflict of interest due to relationships with any of the parties or for any other reason. For cases classified for Supervisor Action, an SA file will be prepared by Administrative Support Staff and forwarded, as described more fully below, beginning at page \_\_\_\_.

## **XI. Complaints Classified for Supervisor Action**

Directions for opening a case file on a complaint classified as a Supervisor Action (SA) can be found in the Appendix at \_\_\_\_\_. SA's are placed into a green file folder and are commonly called a "Green File."

Complaints classified as SA are non-disciplinary in nature and, therefore, collective bargaining provisions that control discipline matters generally do not apply. The primary purpose of the SA is to document the complaint and determine that the conduct is de minimus in nature, and does not require investigation beyond intake. This information is either sent to the named employee's Chain of Command as "information only" or OPA may request that the chain of command take specific requested actions as follow-up.

The most common requested actions in an SA are for the supervisor to contact the complainant for clarification about the complaint, discuss the complainant's concerns with the named employee, and write a closing letter to the complainant as to actions taken as a result of the complaint. Roll Call training is another common OPA request, as a means to bring chronic or general issues to the attention of a precinct, watch or squad. Instructions sent out with the SA and a list of actions commonly requested by OPA can be found in the Appendix at \_\_\_\_.

Generally, an Intake Complaint is identified as an SA within the first two weeks of the intake process. The Intake Sergeant gathers as much information is readily available about an event, regardless of whether it appears the matter will be classified for SA. This ensures that the OPA-IS Lieutenant and other reviewers have all necessary information at hand to properly make a classification determination.

The basic standard to determine if a complaint is properly classified as an SA is to consider, if the allegation as presented is true, would discipline normally result? The following is a list of SA topics that the OPA-IS Lieutenant uses to identify the SA complaint issues. The Director approves these issues, prior to sending the SA file out to the line:

1. Service Quality
2. Possible Mental Issues
3. Disputes Report / Citation
4. Biased Policing: Traffic
5. Biased Policing: Other
6. Rudeness / Attitude / Demeanor
7. Inquiry / Request / Referral
8. Discretion in Enforcement
9. Off-Duty Traffic Control
10. Demonstrations
11. Special Events
12. Sporting Events – Safeco
13. Sporting Events – Seahawks
14. Sporting Events – Key Arena
15. Workplace Issues
16. Private Conduct
17. Traffic Violation by Officer
18. Search / Seizure Issues
19. Other
20. In-Car Video

Generally, SA files are given a 30-day due date for the Chain of Command to process and return the file for review by OPA. Extensions are granted, normally for 2 weeks, for a number of reasons. The most common is when the Chain has difficulty in reaching the complainant, or the supervisor or named employee(s) are unavailable (e.g., on sick or vacation leave, or in training). Due dates and extensions, if any, are noted in the AIM tracking field.

SA's do not require investigations and normally are complete and ready to process went sent to the line. It is important for the chain of command to understand that any discussions they have with employees are not interviews, nor are they recorded. The *Garrity* Advisement is not required since there is no potential for discipline. Employees are allowed to have a union representative present, if they desire, while discussing the SA issues with a supervisor.

The left side of the SA file contains the OPA intake documents. These typically include:

- The AIM complaint form (includes any OPA requested actions for the Chain)
- The Intake Sergeant's follow-up
- The complainant's written complaint
- CAD and GO Documents
- Copies of Citations
- Other records obtained
- Copy of the 5-day notice
- Note: Audio statements for SA's are not normally transcribed. Instead, they are burned to a CD-ROM and included in the file so the Chain of Command can listen to the complainant's statement.

The right side of the SA File is reserved for the Chain of Command and their responses. This typically includes:

- The SA instruction cover sheets (including due date)
- The supervisor's follow-up
- The supervisor's summary
- Copy of the Closing Letter

Supervisor Actions are normally processed by an employee who is at least one rank above the named employee, including non-sworn employees and their management counterparts.

An opening letter (or email) is sent out, whenever possible, by OPA-IS to complainants prior to SA's being sent to the Chain of Command for processing. For an example, see Appendix \_\_\_\_\_. To complete an SA file, the Chain of Command documents the completion of the OPA requested actions or they initial the file if it was "information only," and return it OPA. The OPA-IS administrative staff logs the file into the office and submits it for review.

The first review of the SA file is done by the OPA-IS Lieutenant, or his/her designee, for quality control and to ensure there is documentation that the requested actions were completed. If there are outstanding actions or the file is deficient, it is returned to the Chain of Command with a request for specific steps to be completed. Files determined to be complete are then initialed and submitted to the OPA Director and Auditor for final review, and initials.

SA files are maintained in the OPA File room for the current year plus three, after which they are subject to the purging process described in Section \_\_\_\_.

## **XII. Complaints Classified for OPA Investigation**

Directions for opening a case file on a complaint classified for investigation (IS) can be found in the Appendix at \_\_\_\_\_. Investigations are placed into a red file folder and are commonly called a “Red File.”

A Follow-up Form should be created for the case and used to log all steps taken in the investigation, subsequent to actions documented in the Intake Form. A sample Follow-up Form can be found in the Appendix at \_\_\_\_\_.

Generally, investigations should be completed within 60 days of assignment; the Lieutenant will list a due date when he assigns the case. If it appears that the evidence necessary was collected during the preliminary investigation, the case will be noted for Expedited Review. These cases will be marked with a blue sticker on the outside of the file.

- A. Within 1 week of assignment of a case that has been identified for expedited review, the Sergeant-Investigation will consult with the OPA-IS Lieutenant and OPA Director to determine what steps need to be taken to finalize the investigation.
- B. If no further investigation is necessary, the Case Summary should be prepared and the file forwarded for review within 1 week of the consultation with the OPA-IS Lieutenant and OPA Director.
- C. If further investigative steps are necessary, but the case remains appropriate for expedited review, the investigation and Case Summary should be completed within 30 days of consultation with the OPA-IS Lieutenant and OPA Director.
- D. The OPA-IS Lieutenant will complete their reviews of the case within two weeks of the Sergeant-Investigator forwarding the Case Summary.
- E. The OPA-IS Captain will complete the PDM within two weeks of the OPA-IS Lieutenant forwarding the case.
- F. The OPA Director will complete the Certification and closing documents will be prepared within 10 days of the publication of the PDM.

More typically, complaints require investigation beyond that done during intake. Thus, the first step for the Sergeant-Investigator assigned an OPA-IS investigation is to review the complaint and all materials collected during the intake process, and to consult with the Intake Sergeant to ensure that any perishable evidence has been collected, or to make it a priority to collect the evidence at that point.

The next step is to create an Investigation Plan (IP), to help focus and guide the investigation. The IP assists in understanding what is and is not being investigated, provides an investigative

strategy, identifies potential sources of information, sets out timelines for conducting the investigation, and helps the Sergeant-Investigator anticipate problems before they arise.

Key segments of the Investigation Plan include:

**A. Allegations/issues to be investigated:**

- Check the Summary Investigation Report to see the SPD Manual policy section identified in the complaint, along with the specific violation alleged for each named employee.
- Include in the case file a copy of the SPD Manual policy section at issue, along with any related policies or statutes.
- Identify the primary and any secondary issues involved – what elements need to be established to prove or disprove each allegation?

Do not limit the allegations to the words or specifics raised by complainant. As complainants would not typically be familiar with the Seattle Police Manual, they cannot frame their concerns neatly within the language of SPD policies. Assess the totality of the facts

- available and ensure that the employees named and allegations listed correctly cover the potential misconduct involved.

**B. Investigative strategy – identify the key sources of evidence and approach to be used in moving forward:**

- Witnesses and others who might have relevant information:
  - Complainant, named employee, witnesses to the incident, others with information about the incident, and internal or external experts.
  - The complainant likely was interviewed during intake, but consideration should be given whether to conduct a follow-up interview, particularly if the original interview was not done in person.
  - Note contact information for each potential witness and issues about which they are likely to provide testimony.
  - Highlight discrepancies in the actions described or timelines, or otherwise, among witnesses or with documentary evidence; consider the physical scene and any special elements that should be reviewed with witnesses; note the relationship of any witness to complainant or the named employees.
  - Consider the order in which to interview witnesses and any special considerations, such as whether any are anticipated to be unavailable for any period of time or whether there is concern a witness might be less willing to participate if much time passes.
- Documentary evidence (some of which might have already been gathered during intake)<sup>37</sup>:
  - SPD incident reports including the CAD Call, General Occurrence Hardcopy (GO), Use of Force materials including the Supervisor's Summary and Command Review, and documentation from the Use of

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<sup>37</sup> A review of the evidentiary checklist used at intake is advisable. See copy available in the Appendix at \_\_\_\_.

Force Review Board, Parking Citations, copies of Traffic Infractions, etc.

- Property or evidence reports
- Booking reports and photos
- Consent to search form or other evidence of consent
- Secondary employment permits
- Notes, email, correspondence, memoranda
- Training protocols or records
- Operational or unit manuals
- Payroll or other personnel records
- Medical records
- Other Departmental records of potential relevance
- Physical evidence (some of which might have already been gathered during intake):
  - Digital In-Car Video
  - Holding Cell Video
  - SPD Communications recordings
  - Video and/or audio from the scene (e.g., security systems from near-by businesses) or taken by witnesses
  - Photographs
- Special considerations
  - Is assistance from others in OPA-IS necessary because the complaint is time sensitive, because an unusually large number of witnesses are involved, or because the issues are novel or complex and a second perspective would be useful?
  - Are there named or witness SPMA employees requiring that the OPA-IS Lieutenant or Captain conduct the interview, per the SPMA contract?
  - Is assistance from outside OPA-IS necessary, such as to enhance video?
  - Is the complaint related to another OPA-IS complaint or to any other SPD investigation, investigation by another agency, or litigation?
- Milestones and timelines
  - Set out an anticipated chronology for the investigation
    - Do all documents and physical evidence need to be collected and analyzed before witness interviews begin?
    - In what order should the witnesses be interviewed and why?
    - Make an objective estimate as to how long each step of the investigation will take and whether there could be any problem in meeting the investigation deadline.
    - Consider whether holidays, training schedules, workload, or scheduled absences (for you or witnesses) will impact the investigation timeline.
    - Consider the amount of time it will take to prepare the Case Summary and take other steps organizing the case file after the investigation is done and before forwarding it for review.



- Develop a schedule for the investigation that includes all steps to be taken before it can be forwarded for review.

### **C. Witness Interviews**

- Witness interviews should be conducted in person unless there is specific reason that is not possible, in which case the reason should be noted in the Follow-up log.
- Interviews should be scheduled in a manner allowing for preparation by the Sergeant-Investigator and notice to the witness. The order of interviews is controlled by type of complaint involved and the anticipated testimony of the witness, though special circumstances may dictate when an interview can or should take place. Witnesses who are expected to be uncooperative are sometimes best interviewed last, allowing the Investigator to gather evidence from other sources and to develop specific questions, rather than relying on the witness to offer information. Generally, interviews should be conducted in the following order:
  - Complainant (interview as soon as possible)
  - Subject (if not the Complainant) (interview as soon as possible)
  - Non-SPD witnesses
  - SPD employee witnesses
  - Named employee
- All efforts to contact witnesses should be noted in the Follow-up Form.
- For SPD employees, interview notices should be sent at least 5 days ahead of the scheduled interview day, per the SPOG contract.
  - If SPD employees covered by other CBAs are to be interviewed, check the contract for notice requirements.
  - Notice is provided by email and includes an order to appear, the date, time and place the interview will be held, information about representation rights and consequences for failure to appear, a confidentiality directive, and interview documentation options. A copy of the Investigation Summary Report (2.7), the Police Bill of Rights, and the Garrity Advisement should be attached.
  - A copy of the email should be downloaded to the case file, providing evidence of the date and time the interview notice was sent. An entry should be made in the Follow-up Form that notice was mailed to the employee, copied to the Captain and union, with a copy to the file. Sample language to use in the email notice can be found in the Appendix at \_\_\_\_\_.
- For witnesses not employed by SPD, including complainant, interviews should be scheduled at the interviewee's convenience while avoiding unnecessary delay to the investigation.
  - If a witness is difficult to locate or not returning phone calls, consult with the OPA-IS Lieutenant about strategies to contact the witness.
  - Consider a visit to the witness' home or work place to establish contact, if necessary.

- As a final step, a letter should be sent asking for contact and indicating a deadline by which you need to hear from the witness in order for him/her to participate in the investigation.
  - Note in the Follow-up Form efforts to reach the witness.
- Location of interviews
  - Interviews of SPD employees generally will take place at the OPA-IS office.
  - Witnesses not employed by SPD should be encouraged to be interviewed at the OPA-IS office, though special considerations may necessitate holding the interview elsewhere (e.g., a witness is in jail). Some witnesses may prefer not to come to OPA, so the Investigator may need to arrange to meet with the witness elsewhere. The OPA-IS Lieutenant should be consulted about interviews outside OPA and consideration should be given to having a second Sergeant-Investigator attend the interview and to using an unmarked vehicle for transportation.
  - Once an interview is scheduled, reserve one of the two OPA-IS interview rooms.
- Preparing for the interview
  - Review the Investigative Plan to determine the issues to be addressed with the witness to be interviewed.
  - Consider whether there are documents, In-Car Video, photos or other evidence about which you want to show and question the witness.
  - Prepare an outline of topics and subtopics to be covered with the witness. If listing specific questions, use open-ended phrasing.
- Recording the interview
  - All interviews, whether in-person or by telephone, should be recorded in their entirety, as a safeguard to ensure there is a record of exactly what was said during the interview.
  - SPD employees are obligated to submit to recorded interviews unless otherwise exempt by CBA, though consent to the recording should be noted at the beginning of the interview.
  - Witnesses who are not employed by SPD should be told the rationale for recording interviews and encouraged to consent. If consent is not provided, document the refusal and prepare a narrative summary of the interview immediately afterward to include in the Follow-up Form.
  - Interviewees occasionally bring their own recording device to the interview, even though OPA-IS will provide a duplicate copy of the recording or transcript.
- Conducting the interview
  - The Sergeant-Investigator's demeanor during the interview should be respectful, courteous, and professional. It is very important to maintain formality and neutrality, even if the interviewee is someone the Sergeant-Investigator knows through SPD or otherwise. Each person interviewed should be addressed by his or her surname. If it will be difficult maintaining neutrality with any witness for any reason, consult with the OPA-IS Lieutenant.

- At times it may be necessary to challenge assertions and probe further when there are incomplete responses. If possible, prepare questions ahead of time to address specific points of contention and to anticipate how interviewees may respond, so as to be prepared with follow-up questions.
- Interview questions should address the elements present in the allegation(s) raised against the named employee. Some witnesses may be able to speak to all elements of all allegations, while other witnesses may offer more limited information.
- While using the interview outline as a guide, strive to maintain eye contact with the witness and listen closely to the answers provided. Do not stay so wedded to the outline that the opportunity to pursue an unexpected line of information is lost.
- Start with the In-Person Interview Guide, a copy of which is available in the Appendix at \_\_\_\_\_. This is a scripted guide for identifying each person present in the interview room, as well as other information such as the date, time, location of the interview, Garrity Advisement, etc. The guide is filled out and then read aloud at the start of the interview, to ensure this information is on the record.
- Next, give a brief explanation about the purpose of the interview, and then move into your questions.
- Use open-ended questions as much as possible to elicit the witness' testimony, and keep interruptions to a minimum so that the witness offers as much detail as possible.
  - Who?
  - What?
  - When?
  - Where?
  - How?
  - Why?
  - Examples include:
    - Tell me what you remember seeing when you arrived.
    - Where were you when you saw the subject?
    - Who was present?
    - What did the other officer tell you happened?
    - Why did you use force on the subject?
    - How did you know that the other officer needed your help with the subject?
- Leading questions should be avoided, and typically can be answered with a "yes" or "no," or the answer is implied in the question - the Investigator is, in effect, providing a rationale or explanation to the witness while asking the question.
  - Examples to avoid include:
    - Do you remember seeing the subject with a gun when you arrived?
    - Were you next to your car when you saw the subject?
    - Were Officers Smith and Jones present?

- Did Officer Smith say that the subject had a weapon?
  - Did you use your Taser because the subject would not drop his weapon after you asked him to?
  - You were worried about your safety, right?
  - Did the other officers ask for your assistance?
- Interviews should move from broad to more specific questions.
  - Use repetition to understand details.
  - Restate what you heard to ensure accuracy.
  - Avoid commenting on what was said.
  - Don't express judgment about what is said, either verbally or by tone of voice.
- Use tools to help understand what happened.
  - Have the witness use a map, diagram, photo, video, etc. to help explain what happened.
  - Remember that a record is being created and that the reviewer must understand the witness' testimony in relation to any tool or gesture used. For example, if the witness watches the In-Car Video of an event and makes a comment, make a note on the record of the point in the ICV that the comment was made.
- Keep short notes about what you hear during the interview, but continue to maintain eye contact with the witness and observe body language.
- Establish the relationship between all the parties present at the incident. Perceptions, statements and credibility may vary depending on the interviewee's relationship to others.
- Where there is a discrepancy between the witness' testimony and other testimony or evidence, question the witness about the discrepancy without expressing judgment. For example: I'm confused because you said you said you returned to the precinct after the incident, but CAD indicates you were responding to another call at the time. Can you help me understand this?
- Employee witnesses should be asked about their understanding of the policy at issue and, if relevant, related training.
- Concluding the interview
  - Ask the witness' representative if he/she has any questions to ask of the witness.
  - Before ending the interview, ask if the witness has any other information about the incident or complaint they would like to provide, including whether they are aware of other witnesses.
  - For witnesses who are non-SPD employees, it is useful to verify regular and back-up contact information in case there are follow-up questions.

#### **D. Conducting Interviews with a Primary and Secondary Sergeant-Investigator**

Occasionally, it is useful for two Sergeant-Investigators to be involved in the same interview. The case might be particularly complex, the Investigators might have related cases, or it might be

anticipated that the witness will be difficult to interview. In such a situation, the primary Investigator on the case would take the lead, setting strategy prior to the interview, controlling the flow of the interview, asking most of the questions, taking brief notes, and operating the recorder. The secondary Investigator takes more thorough notes, identifies areas where more probing is needed, follows up with questions after the primary Investigator is finished. On occasion, it will not be necessary to ask any follow up questions, but the secondary Investigator will still be useful in sharing notes of the interview and observations about the witnesses' demeanor and non-verbal behavior.

#### **E. Preparing the Case Summary**

Once all steps in the investigation have been completed, or there is an explanation as to why some step was not taken, the evidence is summarized in the Case Summary. There are different ways to organize the Case Summary, but the most effective approach is to start with the allegations and elements within each. Then list the testimony or documentary or physical evidence that speaks to that issue. This approach means that some evidence is repeated as it will be relevant to more than one allegation or element. But this way of presenting the evidence helps the ultimate decision maker sort through the information and more easily arrive at the disposition. See sample Case Summaries in the Appendix at \_\_\_\_.

Once the Case Summary is prepared and the file is ready for forwarding for review, send a letter or email to complainant and the named employee(s) indicating the investigation appears to be complete and will be moving through the review process before a recommended disposition is made. See sample correspondence in the Appendix at \_\_\_\_.

#### **F. Review by the OPA-IS Lieutenant, OPA Auditor and OPA Director**

When the Sergeant-Investigator has completed the investigation and written the Case Summary, the file is forwarded to the OPA-IS Lieutenant for review. Once he has assured himself that no further investigation is necessary, the OPA Auditor conducts her review. She may request further investigation, and criteria she "should consider include but are not limited to: (1) whether witnesses were contacted and evidence collected; (2) whether interviews were thorough; (3) whether applicable OPA procedures were followed."<sup>38</sup> If the OPA Auditor has any concerns about the investigation, the OPA Director reviews the case at that point, too, and discusses the Auditor's concerns. A decision is made as to whether any further investigative steps are necessary or whether the case can be closed despite some unanswered questions, if they do not go to the central allegations in the complaint. If further investigation is necessary, the Lieutenant will work with the Sergeant-Investigator to complete the last steps as expeditiously as possible. The Follow-up log and Case Summary will be amended, as necessary.

### **XIII. OPA Investigation Findings**

After the OPA investigation is completed, a finding on each allegation is made using the preponderance of the evidence standard. The standard is defined in Black's Law Dictionary (8th Ed. 1990) as follows:

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<sup>38</sup> SMC 328.855.C.

“Preponderance of the Evidence: the greater weight of evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”

Using the preponderance of the evidence standard, the evidence gathered during the investigation is reviewed to make one of five (5) findings on each allegation in the complaint<sup>39</sup>:

1. Inconclusive: the allegation of misconduct was neither proved nor disproved by a preponderance of the evidence;
2. Lawful and Proper: a preponderance of evidence indicates the conduct alleged did occur, but that the conduct was justified, lawful and proper;
3. Sustained: the allegation of misconduct is supported by a preponderance of the evidence;
4. Training Referral: while there may have been a violation of policy, it was not a willful violation, and/or the violation did not amount to misconduct. The employee’s chain of command is to provide appropriate training, counseling and/or to review for deficient policies or inadequate training.
5. Unfounded: a preponderance of evidence indicates the alleged act did not occur as reported or classified, or is false.

#### **XIV. Discipline Review Process**

Following the investigation, the OPA-IS Captain issues a Proposed Disposition Memorandum (“PDM”), summarizing the evidence and recommending one of five possible findings<sup>40</sup> for each allegation. If the PDM recommends Sustained on one or more allegations, or if the OPA Director or anyone in the line of command thinks a Sustained finding is appropriate, the following steps are taken:<sup>41</sup>

1. A meeting is scheduled to review the file and decide whether to accept, modify, or reject the PDM finding recommendation and determine the appropriate discipline if the

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<sup>39</sup> Historically, there were eight (8) findings possible when making a disposition in an OPA complaint. As with the original OPA classification system, the finding scheme was confusing for SPD employees, complainants, and others interested in the OPA process. In 2010, the OPA Director, OPA Auditor and OPA Review Board initiated a review of both the OPA complaint classification and findings systems and recommended changes in a report issued in August 2011. OPA instituted the recommended changes as of January 1, 2012. For a copy of the August 2011 Joint Report, see: [http://www.seattle.gov/council/OPARB/reports/2011opa\\_classifications\\_findings.pdf](http://www.seattle.gov/council/OPARB/reports/2011opa_classifications_findings.pdf)

<sup>40</sup> Because of differences in CBAs as well as the fact some employees are non-represented, the process will not be exactly the same for everyone. Thus, the description below is an overview of the typical process.

<sup>41</sup> If the PDM does not make a SUSTAINED recommendation but the OPA Director thinks an allegation should be SUSTAINED, a discipline process will still be followed, beginning with the discipline meeting.

allegation is Sustained. Participants at the meeting include a Deputy Chief, Director of OPA, an Assistant Chief, the named employee's Captain, the OPA-IS Captain or Lieutenant, the Sergeant-Investigator assigned, and the SPD Legal Advisor. Each participant is provided a copy of the investigative file prior to the meeting and comes prepared to discuss the investigation. After receiving input from the participants at this review meeting, the Deputy Chief makes a recommendation to the Chief on whether to Sustain the allegation(s) and if so, what the appropriate discipline should be. The Chief may accept, modify or reject the recommendation from the Deputy Chief. Information is provided to him during the meeting about discipline meted out for similar policy violations, and the employee's complaint history, if any, is reviewed.

2. If the Chief accepts a Sustained recommendation, the employee and his/her union representative are notified of the proposed finding and disciplinary action in a document called the proposed Discipline Action Report (DAR). If the disciplinary action involves a suspension, demotion, or termination, the employee is provided with an opportunity to meet with the Chief of Police to provide information the employee feels that Chief should consider before making a final recommendation. This is called the *Loudermill* meeting. There is no required/prescribed time frame for this meeting, but it usually occurs about two weeks after the proposed DAR is issued.
3. The employee generally may invite whomever he/she wishes to the meeting. Typically, the employee brings a union representative and sometimes also brings an attorney or another SPD employee. Departmental personnel who may attend depends on the CBA involved, but generally, attendees are the Chief of Police, a Deputy Chief or Assistant Chief, the OPA Director, and the Chief's Legal Advisor.
4. After the employee has presented information for the Chief to consider, the Chief has had an opportunity to review relevant portions of the employee's personnel file, including commendations, and questions have been asked and answered, the Chief makes a final decision. Usually the Chief's decision is made immediately after the meeting, though he occasionally takes more time.
5. Once the Chief makes his final decision, the Legal Advisor notifies the employee and union in writing, through the final DAR.
6. Employees who wish to challenge the Chief's decision may do so according to the following procedures:
  - a. For Sworn employees:
    1. If the discipline is a suspension, demotion, termination, or transfer, an employee has two options: (1) to file an appeal with the Public Safety Civil Service Commission within 10 days, or (2) to challenge the decision through the contractually provided for process of a Disciplinary Review Board ("DRB") hearing by making a request within 30 days. In no event is the employee permitted to challenge the decision in both venues. The DRB is comprised of three voting members, one selected by the Department, one selected by the Seattle Police Officers' Guild, and the Chair who is selected from an agreed upon pool of arbitrators.
    2. If the discipline is a written reprimand, it is subject to the grievance procedure, which provides for a hearing before a neutral arbitrator.
  - b. For Non-Sworn Employees:

1. If the discipline is a suspension, demotion, or termination, an employee may file an appeal with the Civil Service Commission within 20 days or utilize the grievance procedure provided for in their collective bargaining agreement; however, the employee must choose one or the other but may not file in both venues. Employees not covered by a collective bargaining agreement may file an appeal only with the Civil Service Commission, unless an at-will employee.
2. If the discipline is an oral or written reprimand, it may be challenged under the grievance procedure of the applicable bargaining agreement as provided in each agreement. A neutral arbitrator usually handles the grievance.

## **XV. Training Referrals**

One of the five (5) possible findings in an OPA complaint investigation is a “Training Referral.” A Training Referral (TR) finding is made when there may have been a violation of policy, but it was not a willful violation, and/or the violation did not amount to misconduct. The employee’s chain of command is required to provide appropriate training, counseling and/or reviews the situation for deficient policies or inadequate training. If the preponderance of the evidence shows a policy violation, but it is very minor, involves a relatively new employee and/or involves a policy or law that has recently changed, training for the employee may be more appropriate than discipline. The TR finding allows for well-intentioned mistakes to be addressed by education and counseling, rather than discipline. If the OPA investigation does not establish even a low-level policy violation, but training deficiencies are evident, the TR is used to ensure that the employee receives the attention needed. In any case, the TR involves supervisors more directly in discipline matters and encourages them to mentor and coach officers in the process.

After the OPA Director issues the Certification that the investigation is complete, if there is a finding of TR on any allegation, the OPA-IS Captain or Lieutenant sends a memorandum to the named employee's Captain (or civilian equivalent). The Sergeant-Investigator assigned to the case may be asked to do the initial drafting of the TR memo. The TR memorandum explains the purpose behind the TR and the type and scope of training required, based on the recommendations made in the Certification and underlying Proposed Disposition Memorandum. It also directs how this training should be documented and gives the Captain (or civilian equivalent) 30 days in which to complete and return the TR packet and the summary follow-up memo that is required.

The training is usually performed by the named employee's immediate supervisor, but is sometimes completed by someone else in the chain of command or a specialty unit. After the training is completed and the TR packet is returned to OPA-IS, it is logged in and reviewed by the OPA-IS Lieutenant and/or Captain for completeness. If there are concerns, they are brought to the attention of the OPA Director. The TR documentation is then added to the case file. For sample TR documentation, see the Appendix at \_\_\_\_.



## **XVI. Complaint Closure Process**

### **A. Proposed Disposition Memorandum**

When the investigation is completed and has been reviewed by the OPA-IS Lieutenant and OPA Auditor, the OPA-IS Captain writes a Proposed Disposition Memorandum (PDM). The PDM summarizes the evidence collected in the investigation and recommends one of five findings (Inconclusive, Lawful and Proper, Sustained, Training Referral, or Unfounded) for each allegation against each named employee, based on a preponderance of the evidence standard. The PDM is addressed to the named employee's Captain (or civilian equivalent), though a copy is sent by email to the OPA Director, the OPA Auditor, and OPA personnel.

For cases in which there is anything other than a Sustained recommendation on the complaint allegations, a copy of the investigative file is made for the named employee's Captain (or civilian equivalent), who has ten days to review the file and to either approve the PDM or submit comments in disagreement. A copy of the investigative file is also provided to the OPA Director and any comments from the reviewing Captain are forwarded for her consideration.

If the PDM makes a Sustained recommendation on any allegation in the OPA complaint, or if the OPA Director or anyone in the line of command thinks a Sustained finding is appropriate, the process described below in Section. \_\_\_\_, Discipline Review Process, is followed.

### **B. OPA Director's Certification**

In cases other than those involving a Sustained allegation, after the named employee's line of command has had a chance to review the file and PDM, and to offer comments, if any, the OPA Director issues the Certification (Cert), which is a statement in writing that the investigation is complete. The Cert lists the original allegations, recommended findings from the PDM, and the ultimate findings made.<sup>42</sup> If the OPA Director disagrees with the PDM recommended findings, or with anyone in the named employee's line of command or OPA Auditor regarding the findings, the Director includes an explanation in the Certification. In the Cert, the Director might also agree with the proposed findings but offer a different analysis than that provided by the PDM. Finally, the Cert might also contain a specific follow up request, for example that the Use of Force Review Board review the matter, or policy and training recommendations she and/or the OPA Auditor makes as follow up to the complaint and investigation. See discussion below in Section \_\_\_\_.

A copy of the Director's findings is emailed to OPA-IS staff, the OPA Auditor and the named employee's Captain (or civilian equivalent). The OPA Director's Assistant then:

1. Drafts the Certification, based on the original allegations, recommended findings in the PDM, and the OPA Director's emailed findings;
2. Sends the original copy of the Certification, initialed by the OPA Director, for inclusion in the case file, and retains a copy for the Director's file;
3. Drafts a closing letter to Complainant that summarizes the evidence and findings;

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<sup>42</sup> The OPA Director Certification is mandated by ordinance. SMC 3.28.810.F.

4. Has the OPA Director sign the closing letter to the Complainant, makes copies for the file and mails the original, along with an evaluation;
5. Emails the Director's Certification, PDM and evaluation to named employee(s) with a copy going to the Section Commander and appropriate Bargaining Unit;
6. If the finding includes a Training Referral, an email is sent to Section Captain with instructions for named employee's supervisor to discuss the circumstances surrounding the allegation that include related policies, directives and training as well as the Precinct Commander's expectations. Commander is instructed to circle back to OPA-IS within 30 calendar days detailing the discussion with the named employee(s);
7. Closes the case in AIM by entering the findings for each allegation listed and indicating the date the OPA Director completed the Certification and updates employee's complaint history card in OPA-IS.

## **XVII. Policy and Training Recommendations Resulting from OPA Complaints**

Regardless of the finding made on allegations in an OPA complaint, the investigation might point to broader policy or training issues. While the Training Referral finding covers training needs for the individually named employee, policy or training recommendations might be made for a particular unit, precinct or the entire Department. When the OPA Director or OPA Auditor identifies such an issue, the OPA Director makes note of it in the Certification summary when the case closes. A follow-up memorandum is then sent to the appropriate unit asking that the recommendation be considered, along with a review of the redacted PDM and Certification.

The Audit, Policy and Research Unit is coordinating the policy and training recommendations received from the OPA Director and Auditor, along with suggestions made by other sources. A spreadsheet listing all recommendations and whether there are relationships among recommendations is noted, along with other information about review and implementation. The Chief has asked the Audit, Policy and Research Unit to develop a protocol to ensure a timely response from the Department on all recommendations made.

Both the OPA Director and OPA Auditor issue reports on policy and training recommendations they have made individually or jointly. The Auditor also reports on the number of cases reviewed, with a description of those in which reclassification or further investigation was requested, a summary of issues, problems and trends noted, training recommendations for officers in general or for OPA-IS Investigators, and/or findings from OPA audits or the OPA Director's reports.<sup>43</sup>

The OPA Director issues reports on an on-going basis summarizing investigations closed during the reporting period, OPA complaint trends in comparison to the same period the previous year, and provides information about cases referred to the OPA Mediation Program. The OPA Director includes a message with each monthly report, commenting on an issue in the closed cases, a trend observed in the complaints filed to date, or some other issue of interest that relates to the work of OPA and the Department's disciplinary process. The Director also issues annual reports summarizing information about complaints filed with the OPA, the types of allegations raised and how cases were classified, the percentage of cases resulting in each of the possible

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<sup>43</sup> SMC 3,28.860.

findings, the nature of disciplinary action taken in sustained cases, the geographic, racial, ethnic and gender distribution of complainants and officers, the number of officers who have received three or more sustained complaints within one-year, and the timeliness of OPA complaint handling.<sup>44</sup>

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<sup>44</sup> SMC 3.28.825.

# **Seattle Police Department Office of Professional Accountability**

## **Training and Operations Manual**

### **Appendix**

[The Appendix will include copies of reference materials and existing documents to use as examples in conducting investigations and other OPA tasks, as noted throughout the Manual. Some of this material is accessible via the Department Intranet, other items are available through the Internet, and some are located on the OPA shared drive. Because it would be ideal to have the OPA Manual available electronically for anyone who wants to access and search it, OPA is determining whether to make hard copies of documents to scan into the Appendix, to provide access information in the Manual for OPA personnel, or to take both approaches.]